

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

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| 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. 2473 of 1990 | IN THE MATTER OF an application by the Tasmanian Public Service Association to vary the Prison Officers Award |
| T No. 2587 of 1990 | IN THE MATTER OF an application by the Tasmanian Prison Officers' Association to vary the Prison Officers 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. 2516 of 1990

IN THE MATTER OF an application by
the Police Association of Tasmania
to vary the Police Award

T No. 2586 of 1990

IN THE MATTER OF an application
by the Ambulance Employees'
Association of Tasmania to vary
the Tasmanian Ambulance Service
Award

T No. 2594 of 1990

IN THE MATTER OF an application by
the United Firefighters Union,
Tasmanian Branch to vary the Fire
Brigades Award

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

FULL BENCH

PRESIDENT
COMMISSIONER GOZZI
COMMISSIONER WATLING

Hobart 24 February 1992
Continued from 25/9/91

TRANSCRIPT OF PROCEEDINGS

unedited

PRESIDENT: Could I have appearances, please.

MR G. VINES: If the commission pleases, GREG VINES, together with **MR PAUL MAZENGARB** for the Tasmanian Public Service Association in all matters.

PRESIDENT: Thank you.

MR K. O'BRIEN: If the commission pleases, I appear on behalf of the Trades and Labor Council and the Federated Miscellaneous Workers' Union.

PRESIDENT: Mr O'Brien.

MR R. WARWICK: If the commission pleases, RICHARD WARWICK appearing on behalf of the Health Services Union of Australia, Tasmania No. 1 Branch.

PRESIDENT: Thank you.

MR D. PYRKE: If the commission pleases, DARRYL PYRKE appearing on behalf of the Association of Professional Engineers and Scientists Australia.

PRESIDENT: Thank you.

MR T. HARDING: Sir, HARDING T., appearing on behalf of the Metalworkers' Union.

PRESIDENT: Mr Harding.

MR M. CLIFFORD: If the commission pleases, MARTIN CLIFFORD appearing on behalf of the Building Workers, Engine Drivers, and the Operative Plasterers, and the Building Labourers' Federation.

PRESIDENT: Thank you very much.

MR R.S. RANDALL: If the commission pleases, RANDALL, RICKY STEVEN, I appear on behalf of the Plumbers and Gasfitters Employees' Union, and the Electrical Trades Union.

PRESIDENT: Thank you, Mr Randall.

MS P. MORAN: Mr President, PATRICIA MORAN appearing on behalf of the Secondary Colleges Staff Association.

PRESIDENT: Thank you, Ms Moran.

MR G. PHILP: Mr President, if the commission pleases, GREG PHILP appearing on behalf of the Tasmanian Teachers' Federation.

PRESIDENT: Thank you, Mr Philp.

MR G. COOPER: If the commission pleases, COOPER G, appearing on behalf of the Australian Workers' Union, Tasmanian Branch.

PRESIDENT: Thank you, Mr Cooper.

MR A.J. GRUBB: If the commission pleases, GRUBB A.J on behalf of the Amalgamated Society of Carpenters and Joiners of Australia, Tasmanian Branch.

PRESIDENT: Thank you, Mr Grubb.

MR P. NIELSEN: If the commission pleases, P. NIELSEN, on behalf of the Ambulance Employees' Association.

PRESIDENT: Mr Nielsen.

MR D.P. HANLON: HANLON, D.P. with **MR T. PEARCE**, appearing for the Minister administering the State Service.

PRESIDENT: Thank you, Mr Hanlon. Well, all the parties will be aware that as a result of our decision of 1st of July we notified everybody that there would be monitoring hearings convened for the purpose of considering amongst other things translation process, the details of titles and scopes of clauses for the awards, and that we would set down a timetable for dealing with agencies specific and conditions of service matters.

To that end in relation to the latter point, we've set down a number of dates which you might take note of before proceeding with that monitoring process. We've fixed eight dates to the end of the financial year: March 30th, April 13th and 14th, April 30th, May 14th, June 17th and 18th, and July 1st.

We would hope that those dates would give us sufficient time to get the major matters out of the road. In the latter part of the year we'll deal with issues going to interest and so on in the awards once they have been finalised.

Well, who would like to lead off with a progress report? Mr Vines?

MR VINES: I'll start, if you like, Mr President, and members of the bench.

Along the - on same basis as we did in our principal submissions - that is from the PSAs point of view, while we have an interest in all four streams we would primarily report to the bench at this stage in relation to the three, being professional, technical and administrative and clerical, and Mr O'Brien will report to the bench particularly on operational services.

Mr President, and members, I think - as the bench would be aware - the association has welcomed the decision in the main that the commission has brought down, and it is our view that very much it is capable of speedy implementation into the state service.

We believe that the decision on those three streams is going to set the groundwork and, indeed, has given us the target to achieve proper reform throughout the state service, and to provide workers in those awards with proper jobs, with proper salaries, proper career paths, and proper training opportunities.

In relation to the implementation, it's been a little bit unfortunate that at this stage we don't have an agreed position with the government on implementation.

That is not because necessarily there is a difference of opinion between us, but more because of a series of circumstances, not the least of which of course has been the recent state election which, from the union movements point of view, we were reluctant to endeavour to reach a full agreement on implementation during the period of the election because, quite clearly, we had no idea what the outcome of that would be; and that period effectively took a month out of the 2 months that we otherwise would have had for negotiation.

A further difficulty was caused inasmuch that a proposal from the government due purely to an administrative oversight was not made available to all of the unions concerned, and we did not jointly have an opportunity to look at the government's proposal.

From the PSA's point of view we have also developed an implementation proposal which is not dissimilar to that being proposed by the government and, indeed, as I indicated before, it would be my view a consolidation with those two would be relatively easy; but similarly with the government's position the PSA proposal has not yet had the full consideration of all the unions, although it is a priority that that occurs.

So we would hope that it would only be a matter of a couple of weeks at the outside that we would have agreement on a full implementation process.

The other aspect with - or the other inability - for us to be further down the path at this stage was immediately following the election and it becoming -

PRESIDENT: Excuse me, Mr Vines, I am sorry to interrupt you. Did you say you would need 2 weeks to get some understanding on implementation?

MR VINES: The actual implementation agreement, for want of a better word, that would be -

PRESIDENT: Yes. Now, who is that with?

MR VINES: The public sector unions and the government.

PRESIDENT: In total?

MR VINES: Yes. We would hope that we would be able to get it done within that sort of time frame.

PRESIDENT: Yes. Thank you.

MR VINES: Immediately following the election, or at least immediately it became clear that there would be a change of government, the PSA sat down with some representatives of the new government to discuss issues relating to the award restructuring and, indeed, discussions at that stage led us to believe that there would have been little point trying to finalise too many issues before the government of the day had a chance to have a look at them.

So, in relation to the implementation, Mr President, and members of the bench, unfortunately we are not in a position to report anything in detail to the commission, but I hope the commission would recognise that circumstances were indeed not of our making, and we will endeavour to achieve what we set out to achieve within the new few weeks.

The association also welcomes those dates that we've just been given to progress this matter and, indeed, those sorts of dates fit in with the time line that we had in mind.

The association sees the implementation of the three streams as an enormous task, particularly in relation to the job redesign aspect, and as we have indicated right through these proceedings, we intend to put the resources into it to ensure that that job is done well and not just a quick fix.

And so we appreciate the commitment that the commission is showing to ensure that this process is followed and progress is being made.

In relation to the actual decision, Mr President, there was one relatively minor issue which I just wanted to briefly address the bench on. Whether now is the appropriate time or not I am not sure, but it is in relation to those awards which are listed to be repealed.

There were three awards, sir, which at various times in submission - and possibly it was never consolidated in one paragraph to you - but there were three awards which I think by agreement between the PSA and the government we had not

intended to be repealed as part of this exercise or, indeed, not necessarily covered by this exercise.

That is, firstly, S082, the Dental Employees Award. Secondly, S089, the Heads of Agency and Principal Managers Award. And, thirdly, S097, the Legal Practitioners and Apprentice-at-Law Award.

Those three awards have career and salary scales very much different to what was envisaged in either the government's claim or, indeed, in our claim, and Mr Hanlon can speak for the government, but it was my understanding that that was the intention of the parties that those three not be included.

And, indeed, the Legal Practitioners Award it was suggested would undergo separate restructuring on its own.

The Heads of Agency and Principal Managers Award is being in part restructured through the introduction of the chief executive officers and senior executive service agreements into that award.

And the Dental Employees has been an issue of discussion on restructuring for some time between my organisation and the Department of Health.

So, Mr President, that is basically where -

PRESIDENT: So, what are you asking us to do with those awards?

MR VINES: That either that they be -

PRESIDENT: You'll be addressing us later on on whether or not they should be repealed, or are you doing that now?

MR VINES: I guess that's all I have got to do, to put to you on them. As I indicated, I think it was by agreement that we didn't want them there, and I think that was mentioned on occasions through proceedings, but I am happy for Mr Hanlon to -

PRESIDENT: Yes. I think the reason they went in was because they were listed in the original claim.

MR VINES: Yes. I think that claim was varied on occasions throughout proceedings, sir, but as I indicated it is not -

PRESIDENT: Anyway, we have left the option open there, that the question of what awards are to be repealed is up for discussion and further submissions.

MR VINES: Well, we'll take that on board, Mr President, and include that in our implementation discussions.

Sir, in relation to the fourth stream which I only intend to speak very briefly on, the association does have a significant membership encompassed potentially by that stream, and thus we should make some statement in it.

There are a range of areas which my organisation and other public sector unions will be seeking further clarification on in relation to that stream, but it appears at this stage that there will be greater difficulty in the implementation of that stream compared to the others. But the public sector unions are confident that - or are hopeful - that with clarification of some outstanding issues that we can move to have that implemented quickly, and together with the other areas of the full decision. So that is all I have to report at this stage, Mr President.

PRESIDENT: So March the 30th, in your view, would be an appropriate time to resume to hear what you've been able to establish in terms of implementation -

MR VINES: Yes, sir.

PRESIDENT: - of processes.

MR VINES: That would be a most appropriate date.

PRESIDENT: Yes.

COMMISSIONER GOZZI: Mr Vines, have you had the opportunity to hold any discussions with respect to conditions of employment generally in the public sector and agency specific items as well?

MR VINES: There have been, sir - unfortunately I've been out of the state for seven of the weeks since this process has been going on, but there have, to my understanding, been a number of meetings prior to the election being called, after the election being called and, indeed, during the period where there was speculation that economic incapacity arguments were going to be run. The union sought clarification from the then premier as to his intentions in relation to economic capacity and indicated that it wouldn't be appropriate for the unions to be negotiation on one area if the government was seeking to throw the whole matter out.

So, since early in the year there haven't been any meaningful discussions on conditions. There was a meeting last week between ourselves and the government where discussions did resume on conditions and I would anticipate that they will continue and be part of the process that we'll report back on the 30th of March for full timetabling. That's in relation to the general ones. In relation to agency specific, from what I understand there haven't been any discussions on agency

specific matters involving the union. Although I understand that preparation is being made with individual departments.

COMMISSIONER GOZZI: Yes, thank you, Mr Vines.

MR VINES: Thank you, Mr Commissioner.

PRESIDENT: Mr O'Brien?

MR O'BRIEN: If the commission pleases, in relation to the matter last raised, conditions of service, I intended to report that the parties have met a number of times in a committee, that is the representatives of the public sector unions together with representatives of the government. Not all of the public sector unions have met. The condition of the abbreviated meeting, if I can put it that way, is that those discussions are on a completely without prejudice basis, both on the government's part and on our part, so that those discussions are not inhibited.

We would therefore not be in a position to give you ongoing progress reports about what has or hasn't been agreed at that stage because, I guess, we don't want to inhibit the overall process. And in any case the government's side would be fettered by its decision-making process and our side would be fettered by the relevant decision-making process that we determine.

PRESIDENT: Yes, I can understand that.

MR O'BRIEN: In relation to the operational stream, our position is that certainly the commission will be aware that there are some concerns about that area. At this stage we have decided that we would attempt to seek further clarification of a number of points. It would be difficult, in our view, to make any substantial progress on the implementation of the decision without a number of points being clarified.

There's been a discussion, that the commission members will be aware of, this morning amongst unions about that process. I think we would be happy if it were possible to have an off the record discussion about some aspects of the decision, so that we can be clear in our mind on how we can approach the decision in terms of implementation and determine exactly how we go about it.

PRESIDENT: When you say an off the record discussion, do you mean -

MR O'BRIEN: Off the transcript.

PRESIDENT: With the commission.

MR O'BRIEN: With the commission.

PRESIDENT: Or with - amongst the unions themselves.

MR O'BRIEN: We certainly wouldn't take the time of the commission or its premises for that sort of discussion. We would be seeking some opportunity to clarify some matters with the commission. And in relation to that I think we would appreciate the - if the commission would make itself available for such a discussion of particular matters which various organisations want to raise. In relation to -

PRESIDENT: Do you - are you saying that you want to seek clarification of points that have been made or are you seeking to reopen the merit of points that have been determined?

MR O'BRIEN: Well, I certainly didn't say that.

PRESIDENT: Well, we, I think -

MR O'BRIEN: My position at this stage is simply that I've asked for the discussion for clarification.

COMMISSIONER WATLING: Well, I for one, Mr O'Brien, would like to know what they are. I think if you've got matters for clarification I'd like to know what they are.

MR O'BRIEN: Well, that's fine and a number of organisations will -

COMMISSIONER WATLING: I don't there are any - I don't they should be any big secret.

MR O'BRIEN: Well, perhaps if you -

COMMISSIONER WATLING: If you need points clarified maybe you should put the points you need clarified and we'd address those.

MR O'BRIEN: In relation to the matters, I'll back to those, a number of organisations would also put individual matters to the commission.

COMMISSIONER WATLING: Then we might be able to determine whether you're really seeking to reopen it or whether you want points of clarification.

MR O'BRIEN: Well, Mr Commissioner, if at this stage we're asking for a reopening I would have put that.

COMMISSIONER WATLING: Right.

MR O'BRIEN: At this stage, my comments, my submissions, I believe, are clear that I was seeking -

COMMISSIONER WATLING: I understand that, but -

MR O'BRIEN: - clarification.

COMMISSIONER WATLING: - you have asked to go off the record to discuss points of clarification and I think everyone is entitled to know what you want clarified.

MR O'BRIEN: Well, if the commission prefers that it be done on the record that is not something that we oppose. I just thought it was - be convenient to do that and perhaps save transcription from dealing with something that might not be of total benefit to the overall transcript of the case. But we're happy to do it either way.

In relation to the proposed report back dates, we obviously haven't had a chance to consult generally. I'd have to say that the second batch of dates are dates which - at which I would not be able to be present.

PRESIDENT: What's that, the June-July dates?

MR O'BRIEN: That's the April dates, 13th and 14th of April.

PRESIDENT: Oh, right.

MR O'BRIEN: As I'll be - I'm irrevocably committed to a meeting interstate those two days, and indeed some other - or the rest of that week basically.

PRESIDENT: Will you be able to -

MR O'BRIEN: A short week before.

PRESIDENT: Will you be able to have somebody represent you on those dates?

MR O'BRIEN: Oh, it's rather difficult to pitchfork someone into a case of this nature, bearing in mind the role that I've had in aspects of it, that would pose a difficulty. But as I said -

PRESIDENT: We might have to work our way around that because those are dates - the only dates the bench has got, and they've been extracted at great difficulty.

MR O'BRIEN: Yes. Well, I understand that everyone has a busy timetable, but I just indicate that it would be of concern if the matter was to be substantially progressed on those dates, given that we would be denied the opportunity to be represented because of other commitments.

COMMISSIONER WATLING: But you're not denied, that stretching a long bow.

MR O'BRIEN: Oh, in reality I think that we would not be able to be represented to the extent we have been.

COMMISSIONER WATLING: Well, the inference is that the bench is denying you an opportunity. It's a choice that you make, isn't it?

MR O'BRIEN: Well, Mr Commissioner, I would have thought that the commission would understand as it sometimes has irrevocable commitments that so do the parties.

COMMISSIONER WATLING: Yes, right, I understand that.

MR O'BRIEN: In relation to the issues of clarification in terms of the decision that we would seek at this stage, individual organisations, as I said, may put certain matters.

PRESIDENT: Well, we'll - we will consider your request for clarification of certain issues after we've heard the other parties.

COMMISSIONER GOZZI: Mr O'Brien -

MR O'BRIEN: Yes.

COMMISSIONER GOZZI: - with respect to conditions of employment, I noted what you said there, but I just want to reiterate that it is the view of the bench that conditions of employment need to be finalised with the whole of the package to operate and therefore it's important, I think, to indicate right at the outset now, in 1992, that that is our objective. And then, ultimately, of course, if the conditions process doesn't - if it doesn't develop on the consensus basis that the bench might have to arbitrate to expedite those matters.

Obviously it is our desire for conditions matters to be agreed in toto, if possible, but if they can't, if the process breaks down, well, then we wish to arbitrate those matters. For the reason that the package really has to come together on the basis that the conditions matters are resolved as well.

MR O'BRIEN: Well, I guess if that is the way the matter goes we'll have to put submissions on all conditions matters at the time that it comes about. The reason we're proceeding down the path we are is that we're obviously attempting a process to resolve it without requiring the commission to exercise its mind on those matters. And we're attempting a process which we believe gives us the greatest chance of success in that process.

COMMISSIONER GOZZI: Yes, and that's commendable. I just make the point, or reiterate the point, that the conditions aspect of this case also has to be finalised before the package can operate.

MR O'BRIEN: All right. I guess, we'll take those comments on board, if indeed they needed to be made.

PRESIDENT: Yes. We'll come back to your other point later, Mr O'Brien. Yes, Mr Warwick?

MR WARWICK: Thank you, Mr President, members of the bench. We held a series of mass meetings the week before last, throughout hospitals in Tasmania, on the question of the decision and we, like a number of other unions, I think, found ourselves in a difficult position in that there are a number of questions which our members are asking us, which we cannot absolutely answer. And those questions relate to the points of clarification which both Mr Vines and Mr O'Brien have referred to.

And certainly I would seek, from my organisation's point of view, to clarify those matters as expeditiously as possible. Because not only can we not answer those questions we cannot, as a union, form a view as to how we will, indeed, put submissions to the bench on other matters.

PRESIDENT: And, Mr Warwick, would you classify those questions as being questions seeking clarification or going to merit of the decision?

MR WARWICK: What the decision actually means, sir. Those are those questions.

PRESIDENT: Yes. Thank you.

COMMISSIONER GOZZI: Is that in respect of the operational stream only or other streams as well?

MR WARWICK: Well there are some questions going to translation that are continually put to us, but obviously in some respects the bench can't answer those questions, but I think the ones that I'm specifically referring to are operational stream matters, yes.

There is one matter that is fairly clear in the decision and that is the question of award coverage and the repeal of awards. That is not a matter about which we are confused and in respect to that issue, sir, I should foreshadow, Mr President and members of the bench, that the prospect of the Hospital Employees (Public Hospitals) Award being repealed presents us with grave difficulties and it may be appropriate I think if -

PRESIDENT: Grave difficulties or grave concern?

MR WARWICK: Well, concerns. Well the difficulties are in, I guess, in ensuring that we have an adequate opportunity to put to the commission a substantive case in relation to why that should not take place and it would be useful from our point of view if some sort of indication from the bench could be forthcoming in relation to which of those dates that have been mentioned this morning might be an appropriate time to hear that. We, for our part, would certainly be seeking to involve our national office and we would see that being a matter of considerable time and effort and lengthy submissions on our part.

PRESIDENT: Yes.

MR WARWICK: Other than that, in relation to those matters, sir, we - I would only seek to stress again that I believe that those questions of clarification do need to be dealt with as expeditiously as possible.

If I may, I'd also seek to use this opportunity to bring to the attention of the bench a correction in the previous transcript, if I may.

PRESIDENT: Yes, Mr Warwick.

MR WARWICK: And that's at page 967. Sir, there appears to have been a problem with the microphone on that day, and in the - there's a conversation between Commissioner Watling and myself in the first instance and there are two paragraphs of submission from myself and in the second paragraph there appears to be considerable gaps in that transcript and I thought - I would like to put to the bench in fact what was said on that day. The paragraph reads and is correct, it says:

In that regard, Mr President, we believe that the commission's further interim decision of the 1st of July, I think it was -

- and then from there on it becomes confused and what was said was:

- it was not our understanding that we would be limited or prevented from running work value cases before this commission when we gave a commitment to the 1989 state wage fixing principles. We did agree that we would have to have regard to the structural efficiency principle when running those work value cases. We do not believe that our agreement in that regard can be construed or interpreted as an agreement to not run work value cases.

And I - and those are the words that were actually spoken by myself in a printed submission that I have and I make those comments because I don't believe it is in anyone's interests to have the transcript not in fact being accurate.

PRESIDENT: Yes. Yes. Yes, thank you for that -

MR WARWICK: And I look forward - sorry?

PRESIDENT: - we'll issue a fresh page.

MR WARWICK: Thank you, Mr President. I look forward to hearing the responses of the bench on those points of clarity. If the commission pleases.

PRESIDENT: Thank you. Yes, Mr Pyrke?

MR PYRKE: Mr President and members of the bench. The decision that was handed down obviously doesn't operate in a vacuum. Part of the environment also includes market forces and also the Project 2000 review which you may or may not be aware is a major review of the way the Department of Roads and Transport operates. Having been part of the implementation process there, we believe there's a need for the decision to be interpreted in ways which allow that agency to operate efficiently and effectively to be able to deliver its own services and to that end we've been in discussions with the Department of Roads and Transport.

So my submission this morning is that we'd not like to be locked into a process of translation by the bench. We'd like to be able to continue our discussions with the Department of Roads and Transport and to that end I've got a letter from my director of industrial relations. I believe he sent a copy to yourself this morning, and if I might read that into transcript it might be useful to those other parties to the decisions.

PRESIDENT: Yes. Is - this letter from Mr Nadenbousch doesn't go to the question of discussions with Roads and Transport though.

MR PYRKE: No, it doesn't but that's by way of explaining to you the context in which the letter is written and it's - the matters that are in the letter indicate the areas which will require appropriate interpretation.

PRESIDENT: Okay.

MR PYRKE: And it's addressed to yourself, sir, it's headed:

STRUCTURAL EFFICIENCY ADJUSTMENT - STATE WAGE CASE
- PUBLIC SECTOR AWARDS -

- and it's dated today's date -

I refer to the Commission's decision of 22nd February 1992 in the above matter and to the report back which I understand has been scheduled for this morning.

The APESA has a number of concerns regarding the impact of the Commission's 22 February decision, -

- that's not exactly - no -

PRESIDENT: That should be the 1st of July - sorry, 29th of November.

MR PYRKE: Yes, that's right -

- the most pressing of which are:

- and there are three dot points here. The first is:

The salary cut applying to
Class III Professional Engineers.

* The reduction of the senior engineering manager salary range by some \$6,000 brought about by the Commission's decision to remove Class VI-3 and VI-4 from the new award.

- and the third dot point is -

* The fact that the new salary relativities produced are significantly less than those achieved in our other awards.

The Association is anxious to discuss ways in which these and other matters raised by the decision might be alleviated. However because of recent political changes in Tasmania this has not so far been possible. In the circumstances, we therefore ask that any further proceedings with respect to Professional Engineers should be stood to one side for the time being.

What we're saying there is that we believe that the decision, depending on the way it's interpreted, could give the agency problems and what we're asking for is time to speak to the agency to discuss those translation problems. It may be that

they tell us to get lost in which case, you know, we'll be part of whatever translation process is comprehended here. I guess what we're saying is, please don't tie our hands. We'd like to be able to work it out with the agency.

PRESIDENT: Well, I mean, that's why we set the 1st of December as the operative date to enable those sorts of discussions to take place, Mr Pyrke.

MR PYRKE: Thank you, sir. If the commission pleases.

PRESIDENT: Thank you. Mr Hanlon?

MR HANLON: Thank you, sir. I wonder if I may get a copy of the APEA's letter.

PRESIDENT: I'm sure Mr Pyrke would oblige.

MR HANLON: Thank you. Is this an exhibit?

PRESIDENT: No, it's just been read into transcript.

MR HANLON: As you've been advised there has certainly been a number of meetings which have occurred between the TTLC and the representative of the government and they have gone on since last October. And as part of that process which the decision came out in November there were certain proposals and discussions held by both sides about how the conditions of service may or may not need to be changed in terms of the approach of discussions and who should be involved.

As a result of those discussions the government then put a proposal before the TTLC in writing. That went to a series of processes and forums by which both conditions of service, agency specific items and the various four occupational streams could be dealt with. And in doing so it put forward not only a process but also a time line and then sought further discussions on those proposals.

It is a complicated matter. There are a number of elements to that. We have met fortnightly since October. A number of those meetings -

PRESIDENT: That's between government representatives and the TLC.

MR HANLON: It's TTLC, yes. There were two of those meetings not proceeded with on similar terms to which the TTLC has referred this morning, that there was an election in process, that was at their request. We met as late as last week with a further meeting scheduled for 2 weeks from that date.

It was agreed between the parties on conditions of service that when they first commenced that due to both sides - there

are varying interests in different conditions - that to enable those discussions, that is the exchange of drafts, the determination of an agenda that suited the parties, that those discussions should be kept confidential. And, of course, that was done to enable both there to be a free exchange and to work out differences.

It's because of that that - I don't intend to go to the detail. We have quite a large agenda now, we have exchanged drafts on a number of those matters, identified issues and a key factor in all of the conditions is what - you're seeking to introduce standardised conditions is that a different conditions affects a different group of people in a different way so there are varying interests.

To resolve certain matters a proposition has been put forward that consideration be given to establishing subcommittees to do the drafting of words, structures and outlines and not go to quantum, if I could put it that way. Now to enable that process - because people need to see the total picture at the time when everything is on the table so that everybody sees who are winners and losers, if I can use that language. It's for that reason that the dates suggested by the commission do present some difficulty in terms of the early dates. The matter is being taken seriously by both sides. We are intending that the subcommittees handle very significant clauses and that they then will work to the major conditions of service group.

Because of the decision of November it also means we need to address agency specific items within a framework and some of those go to conditions of service, some go to the application. And it would be my view that the early dates proposed would be inappropriate simply because we, as yet, have not been told the view of all of the public sector unions as to the totality of the agency specific items, the occupational groups, the suggested time lines that we have put in to deal with all matters and because we don't have a response I think it's inappropriate for me to go to the detail but we certainly saw conditions of service being resolved by August of this year.

Now in our view the time scale proved sufficient time to identify agreed matters, non-agreed matters and still time to come to the commission for any outstanding resolution, but most matters - are being processed and so a fuller picture would be available. I have no difficulty at all to report to the commission, and the matter was discussed between the parties, as to appropriate times and that we thought it should be no earlier than April. We saw the end of April, given the fact that with three or four subcommittees, the committee meeting fortnightly and the range of other activities that would then come into place, that that was a reasonable time scale.

I think we are not in the situation of being able to say more simply because the process has been one of negotiations and we are dealing with a large of unions, we are dealing with a representative body and we need the government's position to respect the fact of the decision making. We are not, at this point, aware that there is any suggestion that the parties are not going to participate and we are making progress. Certainly we would not be in a position under the current terms of our agreement to say much to you in March.

And it seems to me that we've got ourselves into a situation where we ourselves into a situation where we've set some ground rules which protect both sides which would inhibit us if we'd only proceeded one-third the way through by March. So it would be my view not that we shouldn't report and the commission should not monitor - it's really a question of what the content of that is to preserve the committee's work, if I could put it that way.

COMMISSIONER GOZZI: Of course, Mr Hanlon, we won't only be dealing with conditions of employment.

MR HANLON: We've got - our proposal - we have used the conditions of service committee to raise a number of matters, with the only formal body that we were meeting with on behalf of the public sector unions.

COMMISSIONER GOZZI: So the matter's going to the model award as well.

MR HANLON: Yes, and it - our time line included both the creation of awards, agency specific matters, translation and with a view to taking us up to December 1992.

COMMISSIONER GOZZI: I see.

MR HANLON: And we - I should say for bench's we taken the same steps inside the service to circulate and discuss with agencies - and I'm saying this specifically having regard now to what the professional engineers have put to the bench, all departments know - have been advised what the internal process is to be, what their time lines are to be and how they will fit in to an integrated whole of government approach and the way in which that connects in with the TTLIC. I certainly will take on board the professional engineers matters that - or implied that there are some discussions certainly going on other than through the employer, as we see award restructuring as being a matter, first through the minister administering the State Service and then either to this bench or to the TTLIC via the decision of November the 29th.

PRESIDENT: I thought that might be your position, Mr Hanlon.

MR HANLON: It is, Mr President. So that we would say to the bench that - that at this time it would appear to inappropriate, if there was some suggestion that following the public sector meetings that we were not going to confer and there was not an agreed process, then I have no hesitation in saying we will be seeking a meeting with the commission. The TPSA have indicated that they've got a proposal. All I can say is that we await the response both of an alternative submission or the TTLIC's response to the proposals put forward. We were assured that it was being dealt with on an expedient basis and we would seek your agreement not to proceed with reports back until at least April - I thought that April the 30th would be the earliest that we could give tangible detail.

PRESIDENT: Yes, thank you. Can I hear from the employee organisations as to that proposition about deferring earlier dates we suggested of March 30th, April 13th and April the 14th.

MR VINES: I guess I don't have any problem with that, Mr President. I like the idea of us keeping those dates purely to - to keep all of the parties on their toes in this matter, because I mean there is one hell of a lot of work to be done in a relatively short period of time, and I think if any party is dragging their heels, we've got the potential for the whole process to be thrown out. If the government is of that view, I mean I don't have any real opposition to it, but I thought that the implementation proposal at least should be considered by the commission or reported to the commission as soon as possible and that date at the end of March would - would meet that requirement. So that if we were still disagreed on an implementation proposal - if we hadn't reached one - we could call on the assistance of the commission to have one ironed out.

Because if - the concern that I've got is that we may well - if we adjourn all of those dates we may well still be arguing on the very basic implementation procedure for an unnecessarily long period.

PRESIDENT: Mr O'Brien?

MR O'BRIEN: If the commission pleases, obviously collectively we haven't discussed that - the question but I would have thought that we could live with a proposal in relation to the 30th of April subject to the proviso that Mr Vines raises that perhaps the 30th of March be kept as a floating date if required.

PRESIDENT: Yes, I understand that. Mr Warwick.

MR WARWICK: Mr President, can I say that I do have some difficulty with all of those dates being thrown out. We will

- as I stressed before - would be very interested in the responses of the bench in relation to those matters we want clarified and certainly we will want to be in a position to, if you like, come back to the commission and - and perhaps address you on those matters, so I think it's far more sensible that those dates be there and be cancelled perhaps a week before if they're not required, but it would be far more logical for them to be - to remain open and available for use than to the contrary.

PRESIDENT: Yes, well having - are there other comments on that? Mr Hanlon?

MR HANLON: Well just that I'm not seeking to deny any organisation having access to the bench for any aspect that they want clarified. I thought we were dealing with the dates set for the commission's requirements and I'm not opposed to any of the other dates being used for some other purpose, but in terms of the process, I'm suggesting because of what's before the parties, and what we've been seeking to introduce, that it not be before April the 30th. I could say some remarks about the specifics - I think I'd best not say them other than we wish to retain the cooperation of getting the date and I can't see us being ready this side of April the 30th.

PRESIDENT: In terms of Mr Vines' proposition about the implementation program being on the table on -

MR HANLON: I don't have a difficulty for March the 30th that we report to you either by letter that there is a process is in mind and what the detail of it is.

PRESIDENT: I think what we'll do is we'll keep March the 30th in the lists and we'll delete April 13th and the 14th.

MR HANLON: Can I just - I did miss a point - I have just been reminded - the legal officers -

PRESIDENT: Yes.

MR HANLON: - I am not certain that it could be said there was an agreement. The government's position at that time was that there should be a reduction in awards without limiting a specific number. We did include the legal officers structure in H.10, as part of that exhibit. I accept that they may be an anomaly. My own view is that they are, they should be addressed at the time of making the awards.

PRESIDENT: Yes, there will be an opportunity for that later on. Well, we will adjourn briefly to consider the submission in relation to items of clarification.

SHORT ADJOURNMENT

PRESIDENT: Mr O'Brien, Mr Warwick, with regard to your request to have certain points clarified, we will allow those matters to be put formally. We would remind you that we do not intend to reopen issues. The whole purpose of this exercise is to seek clarification, as the bench understands it. If it goes beyond that then the - those particular matters will be concluded. Is that understood?

MR O'BRIEN: We understand that all you are seeking - proposing to do in these proceedings formally and on the record is to respond questions and clarify the -

PRESIDENT: To respond to -

MR O'BRIEN: - the aspects of the decision.

PRESIDENT: - requests for clarification.

MR O'BRIEN: Yes.

COMMISSIONER WATLING: So I think there is a need for you to take us to the decision and what you want clarified in the decision that you do not understand.

MR O'BRIEN: Yes. I understand that.

PRESIDENT: And your - and the response may well be in written form rather than on the - from the bench in these proceedings.

MR O'BRIEN: So you would like us to ask questions and you will give us -

PRESIDENT: We will take them on board.

MR O'BRIEN: - a subsequent response.

PRESIDENT: We will take them on board and see what we can do with them for you.

MR O'BRIEN: Well, the - individual organisations will have points that they would seek clarification on. Just the first point I would seek is in relation to the operative - and the questions are basically relating to the operational stream.

PRESIDENT: Yes.

MR O'BRIEN: In relation to the level 1 classification standard; is that predicated on a traineeship appraisal or a simple trainee or starting position? And how does one understand progression from level 1; is it necessarily from

that by levels or from level 1 could progress be to a higher level than level 2.

Do we understand the amended decision correctly that the first level applying to base trades qualification is the level 6 rate? Perhaps that has been clarified in the subsequent decision but I thought that we should - because there has been uncertainty about that - have that matter clarified.

PRESIDENT: No, I think that - the decision speaks for itself on that. Base trade level 6 is the first level at which trade work is referred to.

MR O'BRIEN: In relation to the question of special rates - page 8 of the decision refers to special rates - will the commission advise us what it considers to be encompassed in the term 'special rates'?

PRESIDENT: Could you take us precisely to the reference there?

MR O'BRIEN: Sorry, page 8, the second point of the decision there is reference - the three numbers there in the middle of the page, 1, 2 and 3. Point 2 refers to tool allowance, special rates and fares and travelling. And we would seek clarification as to what is included in the term 'special rates'?

My understanding - although there may be organisations that are more directly affected that will put subsequent questions if I have not hit upon the point that I understand that they are seeking to be qualified. And do I understand the position correctly that in relation to any conditions of service matters that they remain to be determined? Because there is - I have privately indicated that there is reference to some conditions of service matters already in the proposed awards.

PRESIDENT: Yes, you referred to casual and part-time rates.

MR O'BRIEN: Yes. And I am not sure whether - yes, probably apprenticeship percentages do not fall under that but I am not certain about that. But certainly part-time and casual employees was not debated and I take it that they remain in the conditions of employment agenda.

PRESIDENT: We did - we were to determine rates of pay for employees though, generally.

MR O'BRIEN: Sorry?

PRESIDENT: Our charter as we saw it was to determine rates of pay for employees generally which of itself would include part-time and casual. They could - it hardly seems that rates

of pay for various groups of employees would be conditions of service as we understand them. Anyway -

MR O'BRIEN: Well, is the commission saying that that is beyond submission?

PRESIDENT: I am saying that was - that is a point of view, I thought that was understood. But we will address you on that formally.

MR O'BRIEN: Yes, I would appreciate formal clarification on that point. And - they are the points that I formally seek clarification upon.

PRESIDENT: Yes, thank you Mr O'Brien. Mr Warwick?

MR WARWICK: Thank you, sir. Clearly we have the same interest in the question in relation to special rates which is at page 8, line 13. But perhaps more specifically than Mr O'Brien put it, does that mean the existing award clause - at least in our award which I am sure Commissioner Watling is familiar with - which refers - which is called special rates and refers to confined spaces, hot places, cold places, dirty work and scaffolding allowance; is that what is comprehended by special rates or is it something else?

The second question relates the matter of operative date. Page 17 of the decision says - if I can just find it - in the last part of that section of the decision the bench says:

In the event that the Commission hands down a State Wage Case decision between now and 1 December 1992 resulting in salary increases, then the amounts appearing in the four model awards attached to this decision will be adjusted accordingly.

We are unclear whether that means - and there are three possibilities, the first being that it means that the rates in the model awards will be increased but rates in existing awards will not be increased so that any increases awarded will not apply until the model awards come into effect, at least 1 December.

Or it may mean that rates in existing awards and the model awards will be varied at the same time prior to 1 December 1992 if so decided by the commission. Or, thirdly it means - it may mean something else.

MR VINES: What?

COMMISSIONER GOZZI: Can you give us a guess?

PRESIDENT: Any

MR WARWICK: And we are more than happy to leave it open to you to tell us what it does mean. The fourth question, and I think -

COMMISSIONER GOZZI: I am tempted to ask you what you think it means.

MR WARWICK: I do not know. I genuinely do not know.

COMMISSIONER GOZZI: Oh, sorry Mr Warwick, just keep on going.

MR WARWICK: The third matter and this is perhaps less specific because it comprehends the aspects of the decision relating to the savings provision and also the definitions contained in the model awards. But the question is, does the operational stream model award envisage that new employees employed after the date of operation of the model award will either - oh, sorry - there are two possibilities which are separate and distinct questions but they are not necessarily options they are two questions really, if you like.

Does the date of effect the savings provision and the definitions taken together mean that new employees would be paid less than previously employed employees? That is, less than employees employed prior to the date of operation of the model award?

PRESIDENT: Less than those on the savings provision, for example?

MR WARWICK: Yes. Is that explicitly what the decisions says? And the second aspect of that question is: does that therefore mean that they will also be paid less than the existing rate in the current unstructured awards? That is those persons on the savings provision?

COMMISSIONER GOZZI: How does that -

PRESIDENT: It would be virtually the same question; is not it? I mean how would the old employee be on something that was not in the award?

MR WARWICK: Well, everybody would be on something that is in the model award.

PRESIDENT: In the old award.

MR WARWICK: But it is a similar question but it is different in emphasis. It is different in emphasis.

COMMISSIONER GOZZI: Mr Warwick, I am not quite clear on that question. How would that scenario that you referred to in that second part of the question arise in the first place? It is our intention to repeal awards.

MR WARWICK: Well, it would seem to us - for example, at the base grade, sir, if you look to the actual salary scale in the operational stream which are on page 9 of the model award, level 2 is a rate of \$18, 849 per annum and that is a rate below the fourth increment for a base grade employee at present.

And level 3 is \$20, 027 which is obviously a rate above the current rate of pay. The question, therefore, I guess is: do existing employees by virtue of the savings provision go to level 3 as a result of translation? Is that a logical conclusion?

PRESIDENT: It depends on the classification and job description.

MR WARWICK: But does not the savings provision say something about that anyway?

PRESIDENT: I do not think so, Mr Warwick. That is only there in the event that the appropriate classification processes and translation under the new classification standard has not occurred. Now, given that everything occurs people will be slotted into their new classification at the appropriate level according to classification standards. And if the rate happens to be less than they currently receive then the savings provision will protect them.

MR WARWICK: If the rate is less than they currently receive the savings provision will protect them. Well, I guess that - that is clear, sir, but I do not think it has finally resolved my question. Does it - does that therefore mean that a person who is protected by the savings provision will remain on the rate they are currently paid or will they be classified at the next highest level?

PRESIDENT: There is no reason why they would be classified higher than their job description entitles them.

MR WARWICK: But the job description clearly, sir, might lead to a classification at a rate below their current rate?

PRESIDENT: Then the savings provision protects them.

MR WARWICK: But in what way, sir? Does it protect them -

PRESIDENT: By protecting only their old rate.

MR WARWICK: The current - the unrestructured rate?

MR: now.

MR WARWICK: I see. And how would you envisage that that rate would be specified for legal purposes?

PRESIDENT: That is something we can address in the implementation process and I would have thought that that would be something that you would be discussing.

MR WARWICK: I see. The fourth question - that does clarify my understanding - or my lack of understanding of the matter, sir. The fourth question is one that skirts on the question of merit, but it is one that -

PRESIDENT: You will have to be very careful then, will not you, Mr Warwick.

MR WARWICK: I realise that, sir, but it is one that has come up time and time again at meetings because we have handed out a one sheet page of the rates that we have decided and the obvious question is - that arises again and again is: why the operational stream does not contain increments?

PRESIDENT: That is a merit question, clearly.

MR WARWICK: Well, it is a merit question, sir, but it is not one that was addressed in the decision.

PRESIDENT: It has been addressed. The decision has been handed down.

MR WARWICK: They are the question I have, thank you.

PRESIDENT: Yes, thanks Mr Warwick. Mr Clifford?

MR CLIFFORD: Mr President, commissioners, there is a couple of points we need clarifying. They are not unlike what Mr O'Brien has already asked and the first one goes to the entry point to the new classification scales as to whether that is very rigid in the decision that all new entries must come in at level 1 or that each new entrant in their occupation will have different entry points?

That is something that would really affect our people in sub trade areas as far as relativities go at this point in time, that some of our people if they were to enter at the entry point level 1 would have quite a substantial loss and that any people coming in at that level in the future, there certainly would be difficulties between the two groups of workers trying to perform the same work.

PRESIDENT: Well, if I can just say that they would be appointed at the level of the job they are performing, that would be the rate that would apply. I cannot imagine a tradesman being appointed at level 1.

MR CLIFFORD: Mr Commissioner - Mr President, we are not claiming the tradesperson that they would come in via the apprenticeship area. Their rates are already looked after. It is the sub trade people, the non trades that we are looking at.

PRESIDENT: I see.

MR CLIFFORD: And we just need to know whether it is rigid or there is flexibility per the type of employment that they would be engaged in.

PRESIDENT: Yes.

MR CLIFFORD: The second point which is a fairly major point for our grouping of people again, would be the definition of the special rate, whether that only goes to special rates that are listed in that clause or whether it is open to argue that there are other conditions that would attract a special rate for special people working in special areas?

MR: Sounds special.

PRESIDENT: Yes, thank you. Is that all, Mr Clifford?

MR CLIFFORD: I think so, Mr Commissioner.

PRESIDENT: Yes. Thank you very much. Anyone else?

MR COOPER: Yes, Mr President -

PRESIDENT: Mr Cooper.

MR COOPER: - members of the bench, just one question and that is: when we go in to make these four new awards as I am -

PRESIDENT: Yes, your voice might not be carrying.

MR COOPER: As I understand it, when we make the four new awards there are a set of principles that have been handed down by the bench with respect to making those new awards, it is quite clear in the principles that it says: in the making of a new award existing conditions will apply. Now, I suppose at the benchmark.

Now, with respect to this - this revitalisation or revamping of the public sector, I am just a little bit concerned with respect to that principle and also the existing awards that we have that have to be repealed, because we have a conglomerate of awards over 18 agencies that may have a number of different conditions. So my question basically goes to - with the principles as handed down by the bench last year - how they would apply, in effect, with this decision?

PRESIDENT: I am sure we can address that for you Mr Cooper.

MR COOPER: Thanks, Mr President.

PRESIDENT: No other requests for points of clarification? Well, is there anything else that needs to be done at this juncture? No. Well, we will adjourn until March 30.

HEARING ADJOURNED