

**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 award   |
| 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, 20 July 1990  
Continued from 16/7/90

**TRANSCRIPT OF PROCEEDINGS**

PRESIDENT: Any changes in appearances, please.

MR C. WILLINGHAM: Yes, Mr President. In relation to matter T.2508, I appear together with MR MARTIN JARMAN.

PRESIDENT: Thank you, Mr Willingham. Who wishes to lead off? Mr O'Brien.

MR O'BRIEN: Well, if the Commission pleases, I understand that Mr Bacon has indicated that he has a difficulty getting here this morning and would be available later in the day.

PRESIDENT: Yes.

MR O'BRIEN: That's been communicated to you.

PRESIDENT: We were aware of that.

MR O'BRIEN: In relation to the matter which I addressed on Monday, that is my organisation's position relevant to T.2605, I'm now in a position to indicate that we now advise the government that we wish to be party to the package contained in Exhibit 3 and that we, in doing so, have established a process to discuss agency agendas as well as my own organisation's restructuring agenda. It's the expectation that there will be an ongoing series of discussions and that our matters should be resolved and a full package ready for presentation to the Commission by December this year. That's the sort of timetable that we are looking at in relation to processing the outstanding ...

PRESIDENT: What date in December? The start, the end?

MR O'BRIEN: Well, the start of December.

PRESIDENT: Yes, thank you, Mr O'Brien. Mr Willingham.

MR WILLINGHAM: Mr President, with the leave of the Commission, it may be of some purpose if I continue from the adjournment. If you will recall, at that point I was to provide the Commission and indeed the other parties with a response to Exhibit V.4. With the leave of the Commission I will table an exhibit which deals with that matter.

PRESIDENT: Thank you very much. How many exhibits so far have you tendered in this matter, Mr Willingham?

MR WILLINGHAM: Very few ....

PRESIDENT: Is this the first? This is W.2, I believe.

MR WILLINGHAM: Mr President and members of the Bench, W.2 essentially responds to the Tasmanian Public Service Association's Exhibit V.4, but I think it can be read in



general terms as a statement of intent for most of the matters, if not all of the matters which are before you today.

There will be some parties who have not yet had an opportunity to view this document and we'll seek to correct that omission during the course of this morning's proceedings.

As I indicated to you on the last day of hearing, Mr President, I felt that the Minister would not be very far removed from the position that Mr Vines had advanced and that has proved to be the case. Without taking you through line by line the document W.2, may I just refer the Bench to the significant issues upon which agreement has been reached.

If you would please turn to page 2. There is agreement between the parties in relation to devising, over the next few months, occupational streams in the six categories listed on page 2. That is: clerical and administrative; professional, which includes a number of subgroups; technical; operational services, which itself includes a further three subgroups; custodial and emergency services and those other areas which can be loosely referred to as ranked structures; and finally, the teaching service.

There follows on pages 2 and 3, Mr President and members of the Bench, a number of procedures agreed by the parties as to how these matters will be progressed and at page 5, the target dates for completion of a number of these exercises have been also agreed by the parties. You will recall that in V.4, the target dates for report-back on the broadbanded streams was September. In conjunction with Mr Vines's organisation, those dates have been extended until 24 December, although I should point out that there is nothing to prevent the various working groups that will tackle these tasks from completing their work earlier than those target dates.

You will also see that there are a number of other issues listed on page 5 for which we have set anticipated completion dates and those include certain areas going to the rationalisation of conditions, the work of the training working group and the overall activities of the umbrella group known as the Peak Negotiating Group, which will oversight all of the various subworking groups dealing with these issues.

Apart from some minor changes to the composition and establishment of the working groups that will oversee these matters and some further refinement of the wording between V.4 and W.2, there is little of substance which I would necessarily need to bring to the attention of the Commission.

I would believe, Mr President, that that document not only satisfies the expressed concerns of the Public Service Association and others, but it also addresses the concerns expressed by the Full Bench on Monday of this week and unless

I can usefully answer further questions in relation to W.2, I may conclude at this point and return later for further submissions.

COMMISSIONER WATLING: Could I just ask one question, viz, should W.2 be seen as the latest version of V.4?

MR WILLINGHAM: My understanding, Commissioner Watling, is, with verification from Mr Vines, that W.2 could be seen as superseding V.4 and replacing it.

COMMISSIONER WATLING: Right.

PRESIDENT: Yes, thank you.

COMMISSIONER GOZZI: Mr Willingham, just one question I have, is there any point in here that refers to the translation process?

MR WILLINGHAM: Yes, sir. If you'll go to page 4, the first dot point.

COMMISSIONER GOZZI: Will the translation process be a phased process? How is that intended to be handled?

MR WILLINGHAM: Inevitably, I imagine it will be a phased process, Commissioner. I think it is the view of the parties that the fine detail of each translation is going to have to be dealt with by the working party. But certainly there will be staggered translation, by definition.

COMMISSIONER GOZZI: With the final translation not being any later, presumably, than 30 June 1992?

MR WILLINGHAM: That is the latest date that the parties have agreed is feasible, yes.

COMMISSIONER GOZZI: Thank you.

MR WILLINGHAM: One would optimistically expect that translation should have occurred before that time, subject of course to the outcome of special cases, and the agreements that may stem from those special cases.

COMMISSIONER GOZZI: Right, thank you.

MR WILLINGHAM: If the Commission pleases.

PRESIDENT: Thank you, Mr Willingham. Mr Vines.

MR VINES: Thank you, Mr President. Sir, I can confirm that from the association's point of view, the proposal as outlined in W.2 is an agreed position between the association and the government, and therefore replaces V.4.



To just refer to those questions of Commissioner Gozzi's in relation to translation: as the Commission is aware, we have an agreed translation process as part of the first 3% instalment. We will be implementing that, potentially with some modification, depending what these working groups come up with over the next 6 months. But we would see that because of the ... just the sheer size of the task ahead of us, that there may well be some phasing in.

But it is our objective - and indeed the government agrees with this objective - that the implementation will occur as soon as possible in the new year. That is of course subject to us finalising the work of those working groups by 24 December.

Mr President, from the association's point of view, we see that Exhibit TTLC.3 and Exhibit W.2 together more than meet the requirements of the wage fixing principles in relation to the structural efficiency ... or particularly in relation to the structural efficiency principle. We believe that our negotiations with the government over the last week have enabled us to agree on a process which will now see the introduction of significant changes to awards in the Tasmanian public sector.

We believe that they will, in the long run, provide enormous benefits both for employers and employees in terms of more efficient working practices and more rewarding jobs for employees, including the provision of far better career paths and opportunities for training and skill enhancement. We commend the agreement to the Commission.

The association, as I have maintained right through this process, is fully committed to the concept of award restructuring. We will hope to be back before the Commission within 6 months for four principal streams to be inserted into awards, or to replace awards and, indeed, we will look to, wherever necessary, seek to continue the involvement of the Commission in this process.

There is only one area in relation to TTLC.3 that I would refer the Commission to at this stage and that is in relation to the span of hours. Whilst it is noted in W.2 that the span of hours question is one that will be finally resolved prior to 30 August, I would just like to draw to the Bench's attention there has been one area of ambiguity, which I believe has now been resolved. But I do however want to put it on the record.

It was in relation to the guidelines for the change of span of hours where it relates to 9-day fortnights. I have written to the Secretary of the Department of Premier and Cabinet on this

matter, and I would like to read that letter into transcript.  
It states:

Dear Mr Clarke

I have been informed by my industrial staff that at least one Department regards the 3% Agreement as giving them the right to abolish 9-day fortnights.

I would like your confirmation that the intent of the agreement is to provide for the change in the span of hours and not a 'backdoor' method of abolishing 9-day fortnights. It is our understanding that while the statement in the agreement indicates your view on 9-day fortnights, it does not alter our current respective rights relating to claims for, the establishment of, and the removal of 9-day fortnights, within the normal requirements relating to efficiencies.

I would appreciate your early response.

Yours faithfully

Greg Vines  
General Secretary

I have not had a formal response to that, but from what I understand, it is recognised that that is the intention of our negotiations, that whilst we recognise the government does not favour 9-day fortnights, our respective rights in relation to 9-day fortnights are established. That is, we have the right to continue to claim them and the government has the right to continue to oppose them or take whatever action is necessary.

So I just wanted to clear that matter up, because I was aware that it was becoming an issue of contention between some various groups and it was one that we wanted to kill at the very earliest point in time.

PRESIDENT: Do the words in Exhibit 3 dealing with span of hours need to be changed then?

MR VINES: No, I don't think they do, Mr President. It is understood by the parties and I think there's been sufficient demonstration of good faith over the last week, or the last couple of weeks, that I don't perceive it as being a problem in the future.

But it is just one of those matters where we wanted to nip it in the bud before it bloomed, if the Commission ... But just to conclude ...

PRESIDENT: It's a sort of a codicil to the ... to Exhibit 3.



MR VINES: Sorry, sir?

PRESIDENT: It's a sort of an additional qualification to Exhibit 3.

MR VINES: Well, I wouldn't even call it a qualification. It's just making sure the parties understand what is meant by it and from what I understand that is .... that, in effect, our various rights are reserved. However, the government is making it very clear that it doesn't support the concept of 9-day fortnights, and so if we want them we are going to have to fight for them. But it is not an attempt as a wholesale abolition of 9-day fortnights.

COMMISSIONER GOZZI: Mr Vines, when the negotiations on matters out of the award are finalised, such as span of hours and sick leave and so on, is it intended then to bring forward the negotiated arrangements by way of award variation?

MR VINES: Mr Commissioner, I'd just reconfirm what I put to the Bench the other day - that it is the association's intention to, wherever possible, bring conditions of employment into awards.

We see, particularly with the move of ... or the clarification of jurisdiction on award matters, that is bringing them under this Commission, grievances on award matters, consolidates the view that we have had for some time that it is the Industrial Commission and awards of the Commission that should dictate terms and conditions of employment, and not the parliament or the Governor-in-Council, so it will be our intention to bring as many of those issues as is practicable into awards, and we would see that happening through this process.

COMMISSIONER GOZZI: Thank you, Mr Vines. I also note that in V.2, sorry, V.4, there was a proposal to involve the Commission in monitoring the progress of negotiations.

Now, I understand from what Mr Willingham has put, and I think what you've indicated, that the Commission will be involved as and when necessary, so you don't see any need for a monitoring process.

MR VINES: It's been considered that it is not necessary to put it into the proposal formally, sir, on the basis that we both recognise that we can come here, and from the association's point of view we've maintained that position all along and we will be maintaining that position over the next 12 to 18 months.

COMMISSIONER GOZZI: Thank you.



MR VINES: Just in conclusion, Mr President, as I concluded my negotiations on Monday with what we see as a very significant and all-important part of these negotiations has been the operative date for the payment of the 3%, and we would particularly be looking for an early decision from the Commission that the proposals would be endorsed in full, including that operative date of the second pay period in July, and with the ratification of our proposals, sir, we will be able to commence the process of award restructuring from here.

COMMISSIONER WATLING: That's the first full pay period on or after the 18th.

MR VINES: For the majority of our members, sir, yes, but it was put in the terms of the second pay period, because there are a variety of pay periods in the awards affected.

PRESIDENT: It's a bit difficult for ....

COMMISSIONER WATLING: So what do we write?

MR VINES: Well, it's ... that's a good question, Mr Commissioner. I suppose you could take the easy way out and say it shall operate from the period as agreed by the parties, or as in the ...

COMMISSIONER WATLING: No, it has got to have a date.

PRESIDENT: We can't put that in the award.

MR VINES: Well, I would suggest then the 18th, because that is the majority of employees, 18 July.

COMMISSIONER WATLING: You have obviously got some understanding ... if we pick up that date, you've got some understanding with the employer of what would happen then.

MR VINES: I think there would be a reasonable approach to it, because the agreement that we have with the government is the second pay period and so I don't imagine that would be a difficulty, sir.

COMMISSIONER GOZZI: So now you're saying the operative date 18 July as opposed to the first pay period to commence on or after.

MR VINES: For the purposes of the Commission, yes.

COMMISSIONER GOZZI: 18 July?

MR VINES: 18 July, yes.

COMMISSIONER WATLING: A straight date.

MR VINES: Or the first pay period to commence on or after.  
So the first pay period to commence on or after 18 July.

COMMISSIONER WATLING: Because there is a big difference if  
we just put one day - from a date.

MR VINES: Oh, yes, I appreciate that, sir, yes. Well, the  
first pay period commences on the 17th ... sorry, on the 19th,  
which was yesterday.

PRESIDENT: For the majority?

MR VINES: Yes.

PRESIDENT: I understand.

MR VINES: If the Commission pleases, and from the  
association's point of view, we would once again express our  
appreciation to the Commission for the involvement that it's  
had in this process, over ... particularly over the last 2  
months and in getting the parties together, which has enabled  
us to reach this final agreement with the government. If the  
Commission pleases.

PRESIDENT: Thank you, Mr Vines. Who's next? So we have an  
agreed document.

MR WILLINGHAM: Perhaps there wasn't sufficient pause. Am I  
to assume, since I'm on my feet, that it is an agreed  
document? Should we proceed on that basis?

PRESIDENT: Well, I thought sufficient time had been granted  
to anybody to ...

MR WILLINGHAM: Hope spring eternal.

MR VINES: Keep talking, Clive, before anyone changes their  
mind.

MR WILLINGHAM: Well, yes, we'll keep talking. We'll keep  
talking. This may be much less painful than I imagined.

PRESIDENT: Before you proceed, Mr Willingham, perhaps if we  
could hear from all organisations that they assent to the  
document ...

MR WILLINGHAM: Indeed, Mr President.

PRESIDENT: ... on the record.

MR WILLINGHAM: I was certainly going to not interrupt that  
process. I just wanted to clarify the issue of the operative  
date.

PRESIDENT: Yes.

MR WILLINGHAM: So that other parties could hear our view before responding.

Our view is that the operative date must be expressed as the first operative pay period on or after. I really don't mind if it's the 18th or the 19th, because it will have the same effect in all circumstances.

The second point I would wish to make is to endorse the remarks made by Mr Vines. The agreed operative date in Exhibit 3 is a crucial element of the agreement between the parties and we would earnestly seek the Commission's endorsement of that date on the assumption that it ratifies the agreement between the parties.

PRESIDENT: Yes, thank you.

MR WILLINGHAM: Thank you, Mr President.

PRESIDENT: Thank you, Mr Willingham.

Yes, could we hear from individual organisations as to their position in relation to this agreed package?

MS MONCRIEFF: I might as well ....

PRESIDENT: Yes, Ms Moncrieff.

MS MONCRIEFF: Thank you, Mr President, Commissioners.

Since I was last here for my organisation, my members have in fact agreed to the contents of the package as put together in Exhibit TTLC.3. That is the overall package, if you like, of the government.

In our discussions with Mr Willingham we have reached agreement as to a proposed timetable. My organisation has put forward a draft proposal for restructuring in the boiler house area. It is a national model.

Mr Willingham, in return, has indicated that there is a desire on the part of the government and this may go to the exhibit which has been handed up, which is the W.2 exhibit, that the engine drivers and my members employed under the boiler house award ... Boiler Attendants Award, should in fact conform to the Public Service model.

I'd have to say, sir, that we have indicated that we are willing to consider our document in tandem, if you like, with the PSA package, that we may have to take issues where there are differences to further discussion, but we're not opposed



to considering that quite seriously in light of the government's desire to have these set streams.

I would have to say that the small amount of hesitation I have is based on the fact that we do have a discrete award and it's a matter of fact of employment in that area that our members - and this isn't just unique to the boiler house .... but in general don't try to leave boiler house employment once they get there, and to put them into a stream where there are other areas of advancement could in time become a reality that they would wish to move. But history doesn't demonstrate at this stage that they would wish to enter into other areas of employment.

However, as I said, I've kept our options open and ... or not our options, our mind open to trying to accommodate the desires of the government in the set streams.

Perhaps I should pause at that point.

COMMISSIONER WATLING: So does that really mean that you don't agree in toto to W.2?

MS MONCRIEFF: Sir, I haven't seen W.2. I've not sighted it. I can't agree to something that I haven't seen. It has been raised in discussions, that the government ...

COMMISSIONER WATLING: Well, are you suggesting that we should have a short adjournment so you can get a copy of it?

MS MONCRIEFF: I think, Mr Commissioner, that would be advisable, yes ... preferable.

PRESIDENT: Would it be appropriate for a short adjournment to take place to allow some consultation?

MR WILLINGHAM: Yes, Mr President. I did indicate earlier that I had insufficient copies and was hoping to distribute them during the course of proceedings this morning.

PRESIDENT: Yes.

MR WILLINGHAM: So I'd appreciate a short adjournment and perhaps the services of the Commission's photocopier.

PRESIDENT: You can have the adjournment. I'm not certain about the photocopier. We'll see what we can do.

COMMISSIONER WATLING: I think there's something to do with government cuts.

MR WILLINGHAM: That's why we've got insufficient copies.

PRESIDENT: Half an hour?

MR WILLINGHAM: Oh, 15 minutes.

PRESIDENT: 15 minutes.

We'll adjourn for 15 minutes.

#### SHORT ADJOURNMENT

PRESIDENT: Ms Moncrieff?

MS MONCRIEFF: Thank you, Mr President, for the time to peruse this document.

The position as outlined in this document, as I read it, isn't far removed from the verbal agreement in principle that was reached with the government through Mr Willingham.

However, I do have problems with page 3 and here I am once again at the Commission standing on my feet saying, the FEDFA are not members of the Tasmanian Trades and Labor Council. We have applied for that membership but it is no certainty at this stage that our membership will be quickly coming forward.

I see Mr O'Brien turning round and without placing anything on the record, I could very quietly have a word in his ear, if I may. I shan't at this stage. But we are not yet, as I understand it, affiliated with the Trades and Labor Council.

I've had a brief word with Mr Willingham and it has been suggested that if we amend that agreement to reflect the single award status and position that we have, that we could, as an organisation, be involved in any overseeing of that ....

PRESIDENT: How is it proposed that the agreement should be amended? Do you have the words?

MS MONCRIEFF: I don't have the words. Mr Willingham did, just a few seconds ago, put a form of words to me. I'll pass the ball, if you like, and let ...

PRESIDENT: Yes.

MS MONCRIEFF: ... Mr Willingham come forward with the words.

PRESIDENT: We'd have to say to you now that we would want to hear from all the organisations that have an unequivocal support for Exhibit 3 and W.2. If there are organisations without ... who are unable to give that unequivocal support, we may have to deal with them after we've heard everybody else who supports the document.

So unless you can come up with some words which everybody agrees to, which will allow you to unequivocally support both these documents, we might have to defer hearing you for some time.

MS MONCRIEFF: Mr President, perhaps if I could briefly confer with Mr Willingham.

PRESIDENT: Certainly. We'll go off the record.

COMMISSIONER WATLING: Could I just make the point .... a joint government and TTLT team. I have trouble trying to grasp what your point is because the TTLT could develop any team, I would think.

COMMISSIONER WATLING: The TTLT is master of its own destiny. It could decide whatever team was appropriate to discuss it with the government.

MS MONCRIEFF: Yes, but without being party to the TTLT and having any influence in that decision making, it may well be that a decision is made that flies in the face of, as we ...

COMMISSIONER WATLING: Yes, but that's your choice, isn't it?

MS MONCRIEFF: Not to be a member of the Trades and Labor Council?

COMMISSIONER WATLING: Yes.

MS MONCRIEFF: It is, Mr Commissioner. It's also the government's choice, if it so wishes, to only negotiate with a committee formed by the Trades and Labor Council, or other parties. It simply hasn't written 'other parties' into this document.

COMMISSIONER WATLING: I could understand it arriving at that conclusion because the TTLT by statute is a party to every award of the Commission.

MS MONCRIEFF: Yes. But my ... yes, it is. But I could not ...

COMMISSIONER WATLING: So if your principle is true, are we going to say that the government and TTLT team and the FEDFA ... including the FEDFA and every non-affiliate of the Labour Council?

MS MONCRIEFF: Well, it's up to other organisations to put their position, Mr Commissioner. I can only state the FEDFA's position, which is that we have great problems with allowing any organisation - and I'm not speaking against the Trades and Labor Council - any other organisation determining what will be our method of operating in our award areas.



MR REES: So you should.

MS MONCRIEFF: I couldn't agree to anything other than the FEDFA having some control over what happens in areas where it has a proper right to represent its own members.

MR REES: Absolutely correct.

COMMISSIONER GOZZI: Well, what are the proposed words, Ms Moncrieff? I presume Mr Willingham is going to ...

MS MONCRIEFF: I haven't as yet, sir.

PRESIDENT: We will go off the record for a moment.

MS MONCRIEFF: Thank you.

OFF THE RECORD

MS MONCRIEFF: Thank you, Mr President. Now that I have heard the government's assurances given before this Full Bench that my organisation will not be prejudiced by agreeing to this document as it is so written, I will give our agreement.

PRESIDENT: Thank you very much.

COMMISSIONER GOZZI: Yes. Ms Moncrieff, in respect to that agreement, I think it's important that we understand that the agreement is that you agree to the processes outlined in the document and to the structures that are going to be developed.

MS MONCRIEFF: Yes, well ...

COMMISSIONER GOZZI: I mean, at the end of the day, what I wouldn't like to see happen - I'm sure my colleagues wouldn't either - is that we have a dispute notification in respect to the Boiler Attendants Award where you want to do something contrary in that award to what may be contained in Exhibit W.2.

MS MONCRIEFF: Well, on reading it - and I go to the top of page 2 ... and as I say, this has been a very brief perusal. But I read into those words (I shall give my understanding):

In order to proceed with the next stage of award restructuring [and here I'm quoting from the document] and subject to modification and refinement during the process, this Proposal identifies in-principle the following occupational streams [and then it lists them].

In my negotiations with Mr Willingham, I have tabled the structure that the FEDFA has put forward. I have indicated that we are willing to consider that in the light of these streams, and I understand modification and refinement to accommodate the position that both parties are putting forward as trying to work toward the resolution of a proper structure in that area of employment. It's a process ...

COMMISSIONER GOZZI: Well, you see, this is where I have just some slight concern. I would see that the trades operational structure that's developed would apply to State sector awards; not that we have different structures for different awards, that we have the operational services trades structure would apply per se for tradespeople in the public sector and it would be varied in respect of individual awards to suit the circumstances in that award but, as I perceive it here, derived from that trades structure. I think you are talking about something else.

MS MONCRIEFF: If I dare to be presumptive, Commissioner Gozzi, I don't think we are thinking in unlike terms, which is why, on turning to the implementation and that issue that I raised, the potential for lack of involvement of the FEDFA in a peak negotiating group, all working parties, or any group that are considering these streams, that was exactly my problem. One is contingent upon the other. We will potentially get out of foot, or out of ... I am lost for words ... out of ...

MR .... : Kilter.

MS MONCRIEFF: ... time, kilter, with the others, if we are not involved in the overall process.

COMMISSIONER GOZZI: I can take that point; I recognise that point.

MS MONCRIEFF: Yes, and on recognising that we are working toward those streams. I don't know that our stream is far apart from the PSA model. It may be that they interface easily.

COMMISSIONER GOZZI: Can I just clarify that point with Mr Willingham and Mr Vines, and you, Ms Moncrieff. Do you, in fact, see different structures under the operational services stream within the separate awards where that stream might apply? Is that the intention of this document?

MR WILLINGHAM: Sorry, the question, Commissioner Gozzi, was?

COMMISSIONER GOZZI: Well, I have in mind, Mr Willingham, and I think it is important that I get it clarified, that the structures would be devolved in respect of these particular



... under these particular headings, and that those structures would then be applied as appropriate to the individual awards nominated in the applications.

MR WILLINGHAM: Yes.

COMMISSIONER GOZZI: I am concerned that if we have that macro model that within that macro model other respondents to other awards nominated here may seek to develop different structures.

MR WILLINGHAM: Yes, yes, they may well do so.

COMMISSIONER GOZZI: Totally different to what the broad structures are that may be agreed between the association and other parties and the government.

MR WILLINGHAM: Yes, look, we recognise that there are differing points of view in relation even to the streams we've identified: the professional level, technical level, operational services level. The purpose of the next few months is to bring us as close together to common views as is possible, but we've always recognised that when you return to the Commission the Minister and one or more organisations may have different views on the exact nature of the structure that's proposed to go forward.

COMMISSIONER GOZZI: So the macro structure, if I can identify it that way, will not necessarily be adapted to individual awards.

MR WILLINGHAM: Not if the parties believe there are good reasons to depart from the macro structure, no.

COMMISSIONER GOZZI: So if you have a structure that, for instance, in the operational services area which goes from level 1 up to level 9, and it prescribes rates of pay within that structure, you're saying, Mr Willingham, that the government is quite relaxed about developing a different structure, different levels, different salary bands, for individual awards.

MR WILLINGHAM: I'm not saying we are relaxed at all, because we have a view that Ms Moncrieff's organisation in relation to the boiler attendants - and I'll say this quite openly - fits very, very simply and very comfortably within the four generic streams.

However, what we've said is that because her organisation's position as it stands at the moment is different from how we view the best outcome we'll talk our way through it over the next few months, and maybe Ms Moncrieff - as she has alluded to - might find at the end of the day she has no difficulty with what we are suggesting.



COMMISSIONER GOZZI: But, conversely, this agreement isn't binding to the extent that the structures are agreed. At the end of the day we may still be required as a Commission to resolve areas of differences in respect of the structure that you regard that may be appropriate for the Boiler Attendants Award.

MR WILLINGHAM: Both the structures themselves, Commissioner, and the levels within the structures, yes.

COMMISSIONER GOZZI: Well, how does that then sit with the Commission needing to be satisfied that concrete proposals are in place with timetables to which the parties will work to leading to final award variation? I mean, that's not on the table then, is it?

MR WILLINGHAM: Those timetables are there, Commissioner, and I think Mr Vines has already referred to it, that if the parties are unable to reach agreement the recourse, if they don't seek it, will be taken by the Commission to determine the outstanding issues.

COMMISSIONER GOZZI: Yes, well, I appreciate ... I'm trying to pin you down, and perhaps you don't want to be pinned down ...

MR WILLINGHAM: No.

COMMISSIONER GOZZI: ... but ... yes, but I really do think it's important from our point of view to understand precisely what's being contemplated here.

My understanding, and I'll give you the opportunity to clarify it, my understanding is that structures under these headings have been agreed to in principle.

MR WILLINGHAM: Yes.

COMMISSIONER GOZZI: That those structures will be developed, and that they will then be ... apply to be adapted to individual awards arising from what is agreed under these principal headings.

MR WILLINGHAM: Yes.

COMMISSIONER GOZZI: But you're also saying ... while you are saying yes to me on that point, you are also saying that there may be departures from this agreed structure to suit individual awards.

MR WILLINGHAM: If the parties conjointly believe that special circumstances exist we couldn't rule out that possibility, and I understand what you are saying,

Commissioner, and the only response I can give other than those that I have is that I will just have to perhaps resile from what I had said earlier, and say if Ms Moncrieff's organisation has a problem with what's down so far, we'll have to adjourn our final position in relation to the Boiler Attendants Award until such time as we've thought about what she has to say.

I can't go further than that. I do not intend to piece by piece dismantle either of the two major exhibits just to fit the needs of one or two organisations.

If Ms Moncrieff can't get comfort from what we've said thus far, then she'll have to make up her mind accordingly.

But, really, I have said as much as I'm about to, and that's as far as I am going.

COMMISSIONER GOZZI: Yes, I can understand that, Mr Willingham. I think we've gone to some lengths to indicate in earlier hearings that we would be looking at Exhibit 3 and structures in support of the 3% interim increase.

Now, part of that package, as I would see it, is the unequivocal commitment by the parties to W.2.

Now, if it's up in the air, and the potential is there for the whole thing to fall out of bed in respect of other awards, I put it to you, where are we as a Bench in the context of the integrity of what we've ... are trying to achieve by way of award restructuring?

MR WILLINGHAM: Well, as I will probably have to say to you later, Mr Commissioner, and Mr President, and Commissioner Watling, the government's offer, the government's proposals as encapsulated in Exhibit 3 and Exhibit W.2 form the total part of the deal that's on offer to all-comers.

Now, as Mr President has already indicated, the Bench shortly is going to hear from those parties that put their hands up to that package, in which case we will affirm at the end of that process that we have agreement, and then we'll hear from the parties who can't put their hands up to it and, I guess, reflecting upon what you've said, that is the easiest way to go. Let's hear whose unequivocal undertakings to accept those two documents as part of the 3% second instalment, and let's hear from those who don't and those that don't, Commissioner, we'll deal with at the time.

COMMISSIONER GOZZI: Well, that's why we are in discussion at the moment ...

MR WILLINGHAM: Yes, and I think you're quite right.



COMMISSIONER GOZZI: ... because I don't detect an unequivocal commitment from Ms Moncrieff.

MR WILLINGHAM: No, no, I am inclined now to agree with you, Mr Commissioner, so perhaps we put her into the too hard basket.

COMMISSIONER GOZZI: Well, I don't know that we need to be flippant about it. I mean ...

MR WILLINGHAM: No, I wasn't being flippant.

COMMISSIONER GOZZI: ... it's quite a very serious ... it's quite a very integral, fundamental part of this package.

MR WILLINGHAM: I'm not being flippant. I've gone as far and, perhaps, further than I should have done in trying to accommodate Ms Moncrieff's concerns, Commissioner.

They haven't been enough, and in trying to do that I've given you some, so I think it is time I sat down.

COMMISSIONER GOZZI: Well, I have nothing further, thank you, Mr Willingham.

MR WILLINGHAM: Thank you.

PRESIDENT: Ms Moncrieff?

MS MONCRIEFF: I perhaps agree with Mr Willingham. It is time he sat down.

Perhaps I should at this stage make our position ... the FEDFA's position, and it's a position that is one not of our own making, quite clear.

TTLIC only became available to my organisation indirectly on (and perhaps this is appropriate) on Friday the 13th. While there is talk in this Commission of months of negotiation to reach that final package, there has been no attempt to involve my organisation in those negotiations.

W.2, as the Bench is fully aware, I've just had in my hands in the last 30 minutes.

COMMISSIONER WATLING: So are you then seeking an adjournment to application T.2511? Is that your position?

MS MONCRIEFF: I'm pointing out to the Bench, sir, that if the government wishes to say that the FEDFA should be excluded because it is now presenting problems, then the problems are of the government's making, not of my organisation's, and, sir, I am not wishing to withdraw it, I would wish ...

COMMISSIONER WATLING: Well, do you agree ...

MS MONCRIEFF: ... to proceed on the understanding ...

COMMISSIONER WATLING: Do you agree with W.2? Do you unequivocally agree to W.2 and Exhibit 3?

MS MONCRIEFF: I agree ...

COMMISSIONER WATLING: Because if you don't, I think we can put you into the too hard basket and just hear from the ones that agree.

I'm trying ... I don't think we should drag it out. We could hear from you in greater depths.

MS MONCRIEFF: I'm not trying to drag it out, Mr Commissioner, I'm trying to place on the record the facts.

COMMISSIONER WATLING: But do you agree to W.2, or don't you?

MS MONCRIEFF: TTL3.3, I have already indicated ...

COMMISSIONER WATLING: Exhibit 3, you mean?

MS MONCRIEFF: Yes.

COMMISSIONER WATLING: Right.

MS MONCRIEFF: I believe it has been referred to by other parties as Exhibit TTL3.3.

COMMISSIONER WATLING: Well, it's Exhibit 3. Right. It's Exhibit 3, for your information.

MS MONCRIEFF: Has been agreed to by my members. Therefore the FEDFA agrees to it.

COMMISSIONER WATLING: Right.

MS MONCRIEFF: I have, without consultation with my members or my executive, viewed in the last half hour Exhibit W.2 and I find that I have difficulty in one part of that, which the government indicated it was willing to accommodate now seems to appear not willing to accommodate.

COMMISSIONER WATLING: So you want to put it to one side and consider it at a later hour, or even a later date, your application?

MS MONCRIEFF: I would ask that my position ... my final point be held over until the other parties have had a chance to make their position quite clear.



COMMISSIONER WATLING: Right, that's fair enough.

PRESIDENT: Yes. Thank you, Ms Moncrieff.

MS MONCRIEFF: Thank you.

PRESIDENT: Mr Vines?

MR VINES: Mr President, can I just, just as a point of clarification, sir, so other parties aren't at all confused, and just refer to the status of W.2. As we indicated earlier, that's a replacement of V.4. V.4 was a document that was prepared in relation to those awards which are covered by the PSA's applications, primarily 2399, but on an interim basis those other applications 2467 through to 2481 that we have special case applications in for.

As Mr Willingham has indicated, it is there on the table for any of those parties to the other applications to take, if they want it, and I would hope that we don't see a situation that an agreement in relation to our applications is varied or jeopardised because of what is happening in other cases that we are not a party to.

If I could just very briefly go on. In relation to Commissioner Gozzi's questions on, particularly the operational services stream, it is our strong objective to have a single, or to have standard classifications and scales applying across the whole of the public sector; that with the other unions who pick this up, including ... and such other unions as the FEDFA, we would be seeking to reach agreement on structures that accommodate all of our requirements so that we don't have the current proliferation of scales and awards that we have got now.

So I just hope that other organisations don't get concerned that the thing goes, or gets more confused than is absolutely necessary, because I think the aspirations of all the unions can be accommodated in there without prejudice to any particular paths they may wish to follow themselves. If the Commission pleases.

PRESIDENT: Yes, thanks, Mr Vines. Can we go round the room? Mr Pyrke?

MR PYRKE: Thank you, Mr President. Mr President and members of the Full Bench, you might recall that when we were last here I tabled an exhibit that indicated the APEA's view regarding salary structures. That exhibit was designated P.1. Having discussed P.1 with Mr Willingham, I find that the government will not support the trialling of the proposed structure that it contains.

In these circumstances, and given that there is nothing prescribed in W.2 to which you find exception, I believe that the interests of the APEA will best be served by the association becoming party to the agreement that is contained in Exhibit 3 and W.2.

P.1 is thus a document that indicates where we would like to go, and the association reserves the right to pursue the structure contained in the document should it be consistent with the work and management practices that are identified by the relevant working parties as being a way to go.

So in other words we are not trying to determine an outcome, but if the review of work practices indicates that that's now appropriate, we see no problem with pursuing that structure that we have proposed. Is that ...

PRESIDENT: Yes, I understand that Mr Pyrke.

MR PYRKE: If the Commission pleases.

PRESIDENT: Thank you. Mr Nielsen?

MR NIELSEN: Mr President, in reference to T.2586, the Tasmanian Ambulance Service Award, that on behalf of the Ambulance Employees' Association of Tasmania, we endorse Exhibit 3 and support W.2.

PRESIDENT: Thank you very much, Mr Nielsen. Mr Devine?

MR DEVINE: Mr President, members of the Bench, since I was last before you on the 16th, I have had occasion to travel the State and speak to the membership on a State-wide basis, and again to canvass our views with the State Fire Commission.

And again, myself, like others, this morning is the first opportunity that we have had to view W.2. Whilst we have got no problem with W.2 as a document, I would go on record as saying that we, as an occupational stream, would consider that we would come under point 5 Custodial and Emergency Services, obviously, and for the want again of a better term, a ranked structure.

PRESIDENT: You introduced it, I believe.

MR DEVINE: I say again, Mr President, for the want of a better term - one that fits adequately.

I move on to page 3 of W.2 and I would again go back to the 16th and reiterate our agreement with the document TTLC.3, or document 3, and our ability to act within the bounds of that particular document. And I would say that, in line with page 3 of W.2, 'Implementation', that I would take it that point 1 'determine the process to be adopted in addressing each item



on the agreed agenda; ... that the agreed agenda will be TTL.C.3'. And under those terms of reference we have no problem moving further on in W.2 to page 5 and say that ...

PRESIDENT: I don't think that it actually does refer to Exhibit 3.

MR DEVINE: Well, the point that I would make, Mr President, is that W.2's relationship to the agreed agenda which from our point of view is TTL.C.3, bearing in mind that that also incorporates point 8 point 3, which deals with the specific agenda items of the specific agency of which we have dealt with at length with our agency, and I am in a position to say to you that we will be able to come forward with agreed variation to our award in the very near future.

But, I ...

PRESIDENT: I would have thought (just to stop you there for a moment) I would have thought reference to the agreed agenda would mean the items which the parties deemed necessary to discuss in order to achieve the objective of award restructuring, as set out in page 1, and then to develop the streams. Am I right in that assumption?

MR DEVINE: We don't shy away from the objective of award restructuring, Mr President, but what we do say is that in the situation of specifics and the variations of awards, and we will be coming forward in the very near future to implement those specific variations to the awards, that to date the negotiations have applied specifically to TTL.C.3, and ...

PRESIDENT: Yes, but W.2 addresses those other issues which were raised in V.4 and were of concern to this Commission as being an essential part of the restructuring, or structural efficiency second adjustment.

MR DEVINE: Yes, and as I said earlier, as I said earlier, sir, that under 45 of the implementation we've got no problem with the custodial and emergency services part of that document, and are party to it and party to those negotiations.

PRESIDENT: Yes, I think you'll find that you'll be on all fours once you get into discussions on the way in which the agenda will be developed for the purposes of implementing W.2. I don't think you'll find a great deal of difficulty with that.

MR DEVINE: Further to that, on page 5, Mr President, I say that rationalisation of conditions of service, and the dates as designated in that document, that we foresee that we'll be able to meet those specific deadlines.

PRESIDENT: Very good. Thank you, Mr Devine. Mr Hughes?

MR HUGHES: Mr President and members of the Commission, in relation to application T.2587 the Prison Officers' Association fully endorses W.2, and in relation to the exhibit marked '3', we have no problems with that.

PRESIDENT: Thank you, Mr Hughes. Mr Kadziolka?

MR KADZIOLKA: Thank you, Mr President and members of the Bench. Unfortunately at this point in time I can't agree to the document W.2.

I personally can't see any problem with the document, but it is just simply a matter that I haven't got the authority to do it, to agree to it.

I request that the Bench give me the opportunity to go back to my organisation and canvass the matters in W.2 with them and report back to the Bench some time next week.

PRESIDENT: So you'd require what sort of time? How long would you require to determine whether or not your association could agree?

MR KADZIOLKA: I don't think we'd need long, Mr President. If I could make the suggestion that a member of the Bench be available some time later next week. Unfortunately I have got Branch meetings both Monday and Tuesday of next week, so I will be unavailable on those days. I would be in a position, I think, on Wednesday to agree ...

COMMISSIONER WATLING: So you're really seeking an adjournment to your application, aren't you?

MR KADZIOLKA: That's correct. To T.2516.

COMMISSIONER WATLING: Right.

PRESIDENT: Yes, well, we'll set that particular application aside and determine a date to hear you and inform you.

MR KADZIOLKA: Thank you, Mr President.

PRESIDENT: Is there any other organisation yet to comment?

MR O'BRIEN: Yes, I'll comment, Mr President and members of the Bench.

W.2, as we understood it, arose from V.4. V.4 was a document relating to applications T.2399.

When I discussed this matter with the government this morning there was no indication at that time that our agreement had to



be not only to Exhibit 3 but to a document we hadn't even at that time seen - Exhibit W.2.

We've indicated ... we have an agenda which is a 'without prejudice' agenda on both sides, which is in discussion between us.

Whilst we have no problem with the number of items in W.2, those discussions are separate from the discussions which are taking place on the awards contemplated in application 2399.

We are quite happy to use as a guide Exhibit W.2 for the processing of discussions if we are unable to resolve those matters, but the Commission would have to understand that we have an award which has traditionally operated separate from the other public sector awards, and whilst we will have regard to those proceedings we have a process established which is agreed between us to restructure that award.

So our position is that, as we understood it to the start of the proceedings today, we would be proceeding to restructure our award in accordance with not only Exhibit 3 but with the agency agenda items and our own agenda items which are on the table for discussion at the moment and, indeed, other matters which may be raised arising out of those discussions.

So we have never - until the Commission indicated it - believed it was a condition precedent to agreement that we agree to document W.2, so we're surprised by that.

Indeed, it would have been difficult for us to have so agreed because we had not seen W.2, and V.4 was directed at other applications.

Our position is that we believe we've met the test. We've indicated our bona fides on the processing of applications. Obviously we would be involved as an affiliate of the Trades and Labor Council with any process to draw together the various public sector awards inasmuch as is possible, and for that reason we don't have a problem with the majority of matters which are contained in W.2, but to ask us to stand now and say ... agree to all those items is to really cut across the processes which have been established between ourselves and the government for the restructuring of our own award.

COMMISSIONER WATLING: So you're seeking that your application be adjourned?

MR O'BRIEN: No. I don't believe it is necessary to adjourn it. I believe we've put before the Commission a view on the processing of the outstanding agendas. We've agreed to item 3.

Exhibit W.2 wasn't ...

COMMISSIONER WATLING: Well, if you want to be specific about your award area ...

MR O'BRIEN: Yes.

COMMISSIONER WATLING: ... this is the problem you face: you want to attach yourself to 3, but there is no specific agenda item in that W.3 in relation to restructuring of awards.

That 3 doesn't relate to restructuring of awards at all, it ... there are some offsets there, there are some offsets.

MR O'BRIEN: Yes, I understand what you are saying there, but I would say that, for example, in item 8 there is the continued discussion of agency agenda items. 8.3 ...

COMMISSIONER WATLING: Yes, but where is the plan? Where is the program? Where is the timetabling? Where's the scheduling?

MR O'BRIEN: Well, the timetable was outlined verbally. There is no schedule. The items between us are on a 'without prejudice' basis at this stage.

I'm happy to put a proposed career structure before you, but it is on a 'without prejudice' basis. It is the subject of discussions now. It may well be that it fits in with other career structures and obviously we would be working with the Trades and Labor Council and the other public sector unions about that matter.

But it really is expecting us to come to an agreement on item 3 and then have other parties agree to another document and table it today and say, 'Well, you will agree to that as well as part of the condition to get the agreement', when there was never an understanding of that prior to today's hearing, even though this document was negotiated prior to today's hearing.

PRESIDENT: I thought it had been made fairly clear from the Bench that in addition to Exhibit 3 we would require fairly good evidence of proposals that would be undertaken to restructure appropriate awards, and we wanted to see that documentation as evidence.

MR O'BRIEN: You want to see ... Well, I'm quite happy to put up the career structure which we prepared last year in accordance with the decision, and supplied to the government, and have commenced negotiations upon.

PRESIDENT: One of our problems with that of course is that if there is no agreement on it, then what does it mean to us? It means we are going to end up having to arbitrate it.



MR O'BRIEN: Well, it may be that that's the case in other matters. It's no different ...

PRESIDENT: Yes.

MR O'BRIEN: It's no different from the position of the TPSA, I would suggest. If they don't get agreement with the government on a career structure, what is the position there?

PRESIDENT: Well, it begs the question, really, what's the problem with agreeing to W.2?

MR O'BRIEN: Well, one problem, Mr President, is this, that whilst it talks about examination of new award structures and reduction of a number of classifications, it's fairly general as to those career structure proposals that were contemplated by the PSA.

The problem with agreeing to the document is, as I said, it in some way cuts across what was understood between myself and the government as to the processing of the agendas which have been established between us.

COMMISSIONER GOZZI: Mr O'Brien, I thought on Monday it became fairly clear that the Bench would have great difficulty in just accepting Exhibit 3 as proposals for the awarding of the 3% interim increase, and I think my questioning of Mr Willingham on what the government was going to do in respect of structures I think clearly indicated that the Commission was looking for firm commitments in terms of structures and timetabling for implementation and so on, and I recall, in fact, saying that E.3 missed the mark altogether as far as the principles of award restructuring are concerned.

E.3 is no more than a document that attempts to offset the cost of what may flow out of restructuring. I don't see E.3 on its own as doing anything more than being a second-tier-type exercise.

.... fundamental to award restructuring is this type of ... this type of approach and ...

MR O'BRIEN: Well ...

COMMISSIONER GOZZI: ... we were certainly hopeful that today the parties could agree to timetabling and structures, or the structures and the implementation and that agreement would be across-the-board.

MR O'BRIEN: Well, I don't have a problem with timetabling - indeed we've committed ourselves to a timetable. I don't have a problem with structures, and we're discussing structures, but they're not agreed with our matter, neither

are they agreed with, as I understand it, substantially with matters contemplated in 2399. So we're not in a different position there.

And in terms of Exhibit W.2, I would imagine that there are many parts of it which would pose no problems to my organisation in the processing of this application. But I did indicate this morning that what we had contemplated was a process of continuing what we had commenced on investigating a career structure for the award, which is the subject of application T.2605, and I guess it would be consistent with W.2 in consulting with the Trades and Labor Council if that fitted in in some way with the occupational .... career structure that's proposed by the TPSA if it were accepted .... the government. But on the other hand it would be also consistent with W.2 if it was agreed that it be somewhat different.

So to that extent we're not opposed to the document. My problem is that we really do have an understanding about an agenda between us. We really do have an understanding about a timetable and frankly this is more likely to delay than to ...

COMMISSIONER WATLING: Well, that's the reason why I put to you ...

MR O'BRIEN: ... project the timetable.

COMMISSIONER WATLING: ... would it be more appropriate for the Bench to consider your application, T.2605, in terms of Exhibit 3 and your own timetabling, scheduling and organised program, that we can see as something tangible, separately?

MR O'BRIEN: Well, I'm happy to do that. I'm happy to proceed today ...

COMMISSIONER WATLING: I can understand organisations not wanting to be committed to something on the spot that they've just seen today.

I think our task this morning is to try and find out who can put up their hand and who can't. And if you can't put up your hand in relation to the timetabling and the scheduling and programming of this second round, well, you can be considered separately. I don't think we're trying to railroad anyone into it, but we're just trying to clarify who's in this area and who's out of that area.

MR O'BRIEN: All right. We've ... we have accepted a schedule but it isn't the schedule contained in this document.

COMMISSIONER WATLING: Right, so it may be appropriate then, are you saying, that you look at your own scheduling



arrangements and proposed structures, et cetera, et cetera, when we look at your own application?

MR O'BRIEN: Well, it's before the Bench now and I'm quite happy to proceed with that and what you're indicating is, do I take it, you want a document like W.2?

COMMISSIONER WATLING: Well I, like Commissioner Gozzi, I have to be frank with you, I see No. 3 as just being a package of offsets. I don't believe it goes to the very heart of what the Wage Fixation Principles are about, and that's award restructuring.

MR REES: Hear, hear.

COMMISSIONER WATLING: Right. Now, we've got to look at award restructuring, therefore, to put it in a simple manner, I, as a member of this Bench, would like to see what is the program for your award restructuring? What is it ... what are the intentions of the party in this area? What are they scheduling? What are the program of events? Who's going to meet to decide what so we can lock this thing in? And in return, by locking something in, there's a monetary return.

MR O'BRIEN: Well, I hear what you say. We're not in the position to accept totally W.2 as it stands. That wasn't our understanding of our commitment to the government but I hear what the Commission says. We would have to look at that and I would ask that our application be stood over to a later point today so I can seek some clarification from Mr Willingham on that.

PRESIDENT: Yes, I think that's appropriate.

COMMISSIONER GOZZI: Yes, and Mr O'Brien, whilst I also recognise that different structures may wish to be proposed, it's certainly my understanding earlier in these proceedings that in the public sector there is a general intent to level up the awards and I certainly saw structural efficiency, in terms of structures at least, given an opportunity to do that and I can't recall whether or not it was simply said that that was the intention or whether in fact that very notion is contained in Exhibit E.3.

MR O'BRIEN: Well, I ...

COMMISSIONER GOZZI: And I'm getting a bit ...

MR O'BRIEN: E.3.

COMMISSIONER GOZZI: E.3, yes. Not TTLC.3. Exhibit 3.

MR O'BRIEN: Exhibit 3.

COMMISSIONER GOZZI: Exhibit 3.

MR O'BRIEN: Yes.

COMMISSIONER GOZZI: I'm sorry.

MR O'BRIEN: Well, I think there is something general about ...

COMMISSIONER GOZZI: Statement of principles.

MR O'BRIEN: Statement of principles about employment conditions, under the heading 'Employment Conditions - Protections', I think that might be what you're referring to.

COMMISSIONER GOZZI: Well ...

MR O'BRIEN: But if ... without wanting to debate the meaning of those words, we don't have a problem with the investigation approach in W.2 and, if it's possible, levelling up and having common approaches for classifications; that hasn't been resolved yet. And I think I've indicated that with respect to the process that's been involved there we're certainly already involved in discussions or have been committed to a projected series of discussions about the concept of career structures and levelling up.

I mean, the difficulty that we have is that it probably ... this document doesn't envisage the negotiation approach that we set into train.

PRESIDENT: Well ...

MR O'BRIEN: So ...

PRESIDENT: ... I understand what you're saying.

COMMISSIONER GOZZI: Yes.

COMMISSIONER WATLING: yes.

PRESIDENT: I think we all follow that.

COMMISSIONER WATLING: Yes. But don't get the idea we're trying to railroad you into anything, just the opposite. We're just trying to clarify ...

MR O'BRIEN: Yes.

COMMISSIONER WATLING: ... what the position is. So ...

MR O'BRIEN: Well, I'm quite happy to do that and to take the ...



PRESIDENT: We can see ...

MR O'BRIEN: ... guidance of the Commission on the matter and I'll come back a little later in the day, if that's possible.

COMMISSIONER GOZZI: Yes.

PRESIDENT: We can hold your application over.

MR O'BRIEN: Yes.

COMMISSIONER GOZZI: What we'd like is an agreed package ...

PRESIDENT: If we can get it.

COMMISSIONER GOZZI: ... if we can get it.

MR O'BRIEN: Okay.

PRESIDENT: Ms Moncrieff?

MS MONCRIEFF: I think I'll come in now before the HEF State deposition, sir. Perhaps at this stage I should hand up the documentation that I have been ... my organisation has been discussing with the government. It's a draft of energy production operators. This is a model that has been put forward in the Federal Commission and it's designed to cover the operations of boiler houses in all areas of industry.

This is the document to which I was referring ...

PRESIDENT: We'll call this, FEDFA.1.

MS MONCRIEFF: This is the document to which I was referring and to which I had indicated that the government, through Mr Willingham, and myself have an agreement in principle, but that would be viewed alongside the streams that have been put forward by the PSA.

I still don't see, and perhaps I'm missing something very subtle here, that we are far apart or faraway from this document that ... W.3.

PRESIDENT: W.2.

MS MONCRIEFF: W.2, I'm sorry.

The agreed date for completing the agenda, verbally, not set down, was 30 August which I felt was rather optimistic.

I'm quite happy to conform with the agenda as outlined in W.2. That presents no problem, in fact it is far more realistic than the time frame and agenda that had been discussed and agreed between Mr Willingham and myself.

I can only reiterate: I don't believe that we are flying in the face, as an organisation, of this document. We've indicated that we are willing to consider where our members sit in the overall framework of the government. In the process of negotiation we would be looking at that framework and our own.

And I notice on page 3 of the document W.2, about halfway down, it has that the working groups will be established with fairly broad terms of reference so at the end of the day we, I take that to be the parties, would be in a position to think through all of the implications and take the decision based on long term considerations rather than rush into precipitate and possible ill-conceived action that might well in the fullness of time have unforeseen repercussions.

I would submit that that is essentially what my organisation is trying to do right now .... we have a position whereby we're looking at the operations of boiler houses, not only in this government, but all round Australia.

It may be in years to come that people will move from the area of employment of this government through to the Northern Territory pea producing factory - I don't know what it would be - or food processing, perhaps would be a more appropriate way of putting it, and carry the same conditions, the same qualifications. I'm simply speaking to what is the expectation and anticipation of all unions in award restructuring.

Unless there is something, as I say, very subtle that I have missed in the process, I don't believe that we're at odds with the Bench at all in our proposed ....

COMMISSIONER WATLING: So you're agreeing then to W.2?

MS MONCRIEFF: I see no problems with it, Mr Commissioner, other than we need representation. Mr Willingham indicated that that would be forthcoming. I don't believe that we're saying that we won't be or that we shall be at odds with the PSA structure. I don't know. I'd be less than honest if I say I don't know ...

PRESIDENT: That's the purpose of the working parties, isn't it?

MS MONCRIEFF: ... but our intention is to work toward the resolution. I'm sorry, Mr President ...

PRESIDENT: That would be the purpose of the working groups, wouldn't it, to go through those issues?

MS MONCRIEFF: As I read the document, sir.



COMMISSIONER WATLING: So we can give you a tick that you agree with the W.2.

PRESIDENT: Gold star?

MS MONCRIEFF: Gold ... gold ... I'll settle for a gold star.

COMMISSIONER WATLING: Right. Well, I'm going to put you down as agreeing to it after all of that.

PRESIDENT: Thank you, Ms Moncrieff.

COMMISSIONER GOZZI: Two ticks.

PRESIDENT: Any other ...?

MR REES: Well, we've got the agreed parties finished, have we?

PRESIDENT: It seems so, Mr Rees.

MR REES: Wonderful. Ms Crotty.

PRESIDENT: Ms Crotty?

MS CROTTY: Thank you, sir. I wonder what basket Mr Willingham will put the HEF in?

PRESIDENT: We'll wait and see.

MS CROTTY: I don't ... yes, I don't at this stage need an answer to that but I think I can use my vision.

Sir, we are in the position where can give a 'in principle' support to the document that seems to be the area of contention this morning, but in that 'in principle' ...

PRESIDENT: Which one's that?

MS CROTTY: That's the W.2 document ...

PRESIDENT: Thank you.

MS CROTTY: ... tabled by the Tasmanian Public Service Association and the government. But in that 'in principle' decision, we have to make it quite clear that we do give that 'in principle' decision on the grounds that we don't prejudice any health industry award that we may consider is a part of restructuring at a later date.

The 'in principle' decision that we take on that document is contingent of course upon the document known as Exhibit.3 - the Trades and Labor Council document in relation to offsets.

And I believe this morning our position is that we in fact don't have agreement on that document and we don't have agreement on that document for a number of reasons. And the prime reason is that we believe that in respect to that document, unlike the Tasmanian Public Service Association and the Trades and Labor Council, the conciliation and negotiation insofar as the HEF is concerned has not been concluded in content of that document.

And we say this in full knowledge that there are a number of provisions in that particular document that we are unclear about insofar as the operation and the intent of the government. And I refer specifically to the span of hours and more importantly the 9-day fortnight in Exhibit.3.

Sir, the HEF holds a very firm view ...

PRESIDENT: Could I just ... are they ... is that the only area of contention at this stage?

MS CROTTY: There are a number of extraneous matters ...

PRESIDENT: Right, yes, thank you.

MS CROTTY: ... but I believe if we can clarify the content of the span of hours that we can also, with very little hesitation, clarify the other areas that we're concerned about.

We believe that the government representatives are not giving a clear picture to the HEF or indeed this Commission in respect to the application of those provisions.

We hold this belief because of what has taken place in the past, and perhaps if I can outline, just in the last few days, why events have led up to that confusion.

We don't see the content of the span of hours meaning what the PSA, the Trades and Labor Council and indeed Mr Willingham, on behalf of the government, say they mean, and we believe the words in that particular section are quite explicit, that they in fact mean what we hold that they mean. And we interpret that as meaning that the 9-day fortnight will in fact be abolished for our members who hold that condition throughout the hospital system.

And on a number of occasions we've sought clarification on that matter from the Office of Industrial Relations, and indeed of the advocate of the Health Department, and I have reason to believe that the interpretation they gave us in meetings that we've had with them is in fact different to the interpretation that's been placed before this Bench, and in fact the interpretation different to the PSA.



COMMISSIONER GOZZI: Ms Crotty, just on that, and it might help you, it's my clear understanding that what was said about those matters - standard hours and introduction of the 9-day fortnight - to this Bench is that it's agreed that those matters can be on the agenda, as identified in Exhibit E.3, and the parties - the respective parties - reserve their rights in respect of those particular items - no more and no less. That's clearly my understanding.

MS CROTTY: Sir, just ...

COMMISSIONER GOZZI: There is no commitment apart from the fact that they can be on the agenda to be raised by the parties - either party - further down the track. And it's my clear understanding ... well, let me put it ... rephrase it - it's my perception that should those matters come forward for discussion, then most likely they'll finish up in this Commission to determine the matter. That's the way I see it.

MS CROTTY: Sir, therein lies the confusion. That may be your perception, but ...

COMMISSIONER WATLING: Well ...

MS CROTTY: ... it's certainly not our perception on the clear application of the awards ... the document that you have before you.

And if I can say, the assistant general secretary of the HEF and myself met with Mr Willingham from the Office of Industrial Relations, and indeed Mr Martin, 2 days ago and that was as a result of the hearing that took place before this Commission Monday morning. And we left that meeting with the understanding that in fact it was quite possible that our members who have the condition of service, the 9-day fortnight, currently in the hospitals were in severe danger of actually losing that conditions of service.

Now, notwithstanding that, I have heard my colleague, Mr Vines from the PSA, read into transcript this morning a letter that he wrote to the Secretary of the Department of Premier seeking clarification. Now, there has been no answer to that letter and I believe until we actually get a very clear indication that the 9-day fortnight stays for our members who currently hold that condition throughout the hospital system in Tasmania, we are not in a position to agree with that document.

We've put to the Office of Industrial Relations that we would like a private conference. Indeed, we put to this Bench on Monday that we'd like a private conference to seek clarification on those matters and, in fact, perhaps look at the rewording of the document that's been placed before this

Bench, and on no occasion has that offer been taken up, either by Mr Willingham or under the auspices of the Commission.

And we ...

COMMISSIONER WATLING: But don't you think it's your responsibility to raise the matter with the employer before you raise the matter with the Bench in conference?

I think you have an obligation to raise the issues with the employer that you are negotiating with first.

MS CROTTY: Yes, sir. As I understand through the negotiations on the second tier, the matter of the 9-day fortnight has consistently been raised before the Office of Industrial Relations and has never been rectified. When the document came up for agreement, even then the rewording as proposed by the HEF was not taken up.

On Monday we still had not agreement because of these essential differences and we even then flagged the idea of a private conference to look at the wording of this. And if you can recall, Mr Willingham got to his feet and said there was no need for a private conference.

We then went back on Wednesday before Mr Willingham, again with our bona fides to actually look at the words and we met a closed door.

We are asking for this Commission today for a private conference, under the auspices of the Industrial Commission, to once again look at the wordings of that section, with the intent of protecting the conditions of service of our members who hold that conditions of service now.

Now, Mr Warwick has put on transcript that we have clear instructions from our members that 'no trade-offs in respect to conditions of service for the 3%'. And that was verified again yesterday by our members and they haven't resiled from that position.

So our position is very, very clear.

And it's unfortunate that this whole process, this whole agreed position from the TPSA and the Trades and Labor Council and, indeed, the government should fall, or can fall, simply because of the entrenched view of the Office of Industrial Relations in not allowing conciliation and negotiation to be concluded by one of the major unions in this whole aspect. And I'm seeking indulgence from the Bench, if you so wish, for a direction to go into private conference to see, in fact, if we can get over this hurdle.



COMMISSIONER GOZZI: Ms Crotty, with respect to what you're saying, why isn't the understanding that the Bench has on these issues sufficient?

I mean it's open to any party at any time to make an application in respect of any industrial matter. And all that's been indicated to us here is that these matters are on the agenda and the parties to Exhibit E.3, those that agree with it, have said, 'Okay, the government has identified those issues on the agenda, but if you want to raise them, well, we're telling you that there's going to be a problem'.

I mean, that's simply what the situation is. And I'm sure I'm speaking on behalf of the other members of the Bench, that's clearly the understanding that we have. In fact, as you indicated, Mr Vines reiterated it this morning.

Now, do you want to get to the stage where those items are taken off the agenda altogether?

MS CROTTY: No, sir. Let me come at it a different way.

I understand that it's open to all parties who are parties to an award to come before this Bench at any time seeking an adjustment to conditions of service, and I believe it's open to the government at any time to seek adjustments in award provisions on the 9-day fortnight.

Notwithstanding that, we have a mandate from our members not to trade off conditions of service in respect to the second tier ... the second instalment 3%. And we must stay with that. There is absolutely no way in the world that we can go back with this document, as it's worded, and sell the 3% to the members in respect to the conditions that have been outlined in this award.

And what I'm saying, if it's not the government's intent to take the 9-day fortnight for those people who currently have it, why are they then reticent in appeasing the HEF and not actually rewording the document, whereby we can be ... the onus can be discharged and we can actually say to our members, categorically, 'They do not intend to do this'.

At this point in time we cannot go back to our members with a document and say truthfully and openly that they don't intend to take the 9-day fortnight from those who currently hold that position.

And what I'm asking for is the Office of Industrial Relations to ... not only to clarify that position, but to in fact reword the provisions of this document to ensure that there's safeguards later down the track.

And we're not in a position actually to put our agreement to this document when there's confusion on those words. And there clearly is confusion, notwithstanding what other colleagues might say.

If you refer to the document, it says in the very first sentence ...

MR REES: Attachment 2.C?

MS CROTTY: 2.C.

That the appropriate employee organisations [and this is the individual agents] shall be permitted to restructure working hours.

They shall be permitted without any recourse to anybody, perhaps even not even to this Bench. And then it goes on ...

PRESIDENT: After consultation ...

MS CROTTY: Well ... after consultation? Well, we all know ... well, certainly I know what the meaning of consultation is in the certain areas that I've been involved in. But more importantly, if you go over the page in respect to the 9-day fortnight, it's very clear there, at least to my wording of that provision, that if a 19-day month exists in the hospital area, and that's where we're predominantly concerned about, if a 19-day month actually exists within the hospital area and the 9-day fortnight also does, then the 9-day fortnight becomes redundant, because the second sentence in that paragraph says:

In these cases they are to revert to other schemes.

Now, if we sign this document and later down the track the Office of Industrial Relations and the government comes to us and said 'Look, the 9-day fortnight applies at the LGH, but you've signed this document and we've given you 3% for that signature and the 9-day fortnight applies here, so does the 19-day month, and it's very, very clear here that one shall not stand if the other one's there', what recourse have we got, given that the document allows us the consultation, but then where do we go?

PRESIDENT: I understand your request for a private conference. Are there any other matters in the document you want to address ...

MS CROTTY: Yes ...

PRESIDENT: ... in such a conference?



MS CROTTY: Sir, one of the ... another major issue that we're concerned about is the sick leave provisions. We don't have any objection to the intent of this document insofar as the unlimited sick leave with no accumulative benefits, but what we are concerned of is if that provision doesn't work out as well as the unions and government want it to, that there will be a reversion back to a standardised condition, and what we're seeking from the government is a guarantee that in fact the standardised position will be the standard as applies within the hospital area, and of course that's the 20-day entitlement to sick leave a year. And I understand that that entitlement is a superior entitlement to what my ... may apply in the Public Service proper. So we wouldn't like to be in a position where we agree to this document and find that if all things don't work that we go back to standard hours ... standard sick leave, that in fact are less than what we've got at the moment.

PRESIDENT: Any others?

MS CROTTY: And there's another smaller section that we're concerned about and that's the appeal rights. We'd like to at least have some indication of what will be in the legislation, in fact the position to view the legislation which ...

COMMISSIONER WATLING: Well, I think we all might ....

MS CROTTY: Yes.

PRESIDENT: That would be interesting.

MS CROTTY: Another two points is ...

COMMISSIONER WATLING: Well, what do you actually ... what's your sort of claim in respect to that particular point?

You're saying that you want it to hang around until the draft legislation is about.

MR REES: Well, of course we'd want to look at the draft legislation. We're agreeing to something in principle. We'd certainly want to look at the final result. .... be a change in respect to the appellant's rights in the manner in which certain tribunals may or may not pick up that responsibility. And we would like, you know, with respect, to have a look at the draft legislation and to be able to form a working party around that to criticise or to support. It's as simple as that.

COMMISSIONER WATLING: Does this actually stop you from doing that?

MR REES: I don't know. We want assurances that we have that right.

MS CROTTY: And that insurance ...

COMMISSIONER WATLING: I just thought that 2.2 - Appeals, was just a very general statement in principle, no more or no less. I think a lot of people would like to see any draft legislation that might be floating about in relation to this, probably including myself.

MR REES: Well, we have a government bound to consultation - it's a policy - and I feel sure Mr Willingham would be able to convince his ... the Right Honourable, the Member for Industrial Relations, and Mr Jarman, the Right Honourable Minister for Health, that we would have some rights in looking at draft legislation. I see no difficulty there at all.

COMMISSIONER WATLING: So in relation to this point, you want some guarantees that you'll see any draft bill that might be around?

MR REES: Yes, sir.

COMMISSIONER WATLING: And that's all you ... and then does that mean you agree with it in principle as long as you get a copy of the draft bill to have a look at?

MR REES: We agree with the principle of some amendments in respect to the application and .... rights. After all we're amending a, you know, major Act insofar as Public Service workers are concerned.

PRESIDENT: Yes. So ... just so I understand it, I missed that. The ... you've got no objection to the general thrust of the provision ...

MR REES: No, we haven't.

PRESIDENT: ... in relation to appeals. But you want to see the way the final ... the way it's finally going to be put into effect.

MR REES: Yes, sir.

PRESIDENT: And have the opportunity to comment ...

MR REES: Yes.

PRESIDENT: ... at that stage.

MR REES: Yes.

COMMISSIONER WATLING: So if there was another sentence written ...



MR REES: I'm joined in that desire by Mr Commissioner Watling, we may ...

COMMISSIONER WATLING: Yes. So ... that's right ...

MR REES: ... pursue it ...

COMMISSIONER WATLING: I think ...

MR REES: ... you know, then read it together.

COMMISSIONER WATLING: You could. As long as you didn't bring that Irish tobacco in.

MR REES: I give that awful habit up last September, sir.

COMMISSIONER WATLING: Oh, right.

So if you're saying ... if there was another sentence added to that saying that the parties shall receive a draft copy of any proposed legislation, that No. 2, point 2, is okay by you.

MR REES: I would say so, sir, yes. Yes.

MS CROTTY: I think it's my turn again.

Another two minor issues, is the notice given to non-shift workers and shift workers in respect to the 19-day month. The document, Exhibit 3, says that the notice should be greater than 24 hours. Well, within the hospital ...

COMMISSIONER WATLING: What number are we looking at?

PRESIDENT: That's the end page of the bit on span of hours, is it?

MS CROTTY: Yes. Yes, it's Attachment 2.C.

Within the hospital area there's an award provision to say that employees shall have 7 clear days' notice, and we'd like to get the view of the Office of Industrial Relations on that particular matter in further conference procedures, if that was at all possible.

PRESIDENT: Is that the extent of the issues ...

MS CROTTY: Yes.

PRESIDENT: ... that you want to address? Yes, thank you, Ms Crotty.

Well, before we determine whether we should go into conference perhaps we should hear from you, Mr Willingham, as to whether

or not you are prepared to go into conference - willingly prepared to go into conference.

MR WILLINGHAM: Well, Mr President, my views remain precisely what they were on Monday. I'm not going to delay the ... as much conclusion as we can reach in relation to the State Wage Case today. But for Ms Crotty to put on the public record some of the issues that she has requires me to respond accordingly, and some of what she has put is so close to falsehood that it needs to be rectified.

Most of the issues that Ms Crotty has brought before the Commission's attention .... were never raised with Mr Jarman and I on Wednesday ... were not raised with Mr Jarman and I on Wednesday. They have not been raised in the previous 3 months of discussions with the Hospital Employees Federation - both the Hospital Employees Federation operating its negotiations individually and the Hospital Employees Federation collectively, as part of the Trades and Labor Council - not once. Most of the issues that Ms Crotty referred to have been ... were on mark 1 of Exhibit 3, and that's gone through 22 changes.

Documentation I have here, which I will produce if necessary, that went to Mr Warwick and Mr Rees back in May contains every single one of those items. And gentlemen of the Bench, I'm still waiting for a formal response from Mr Rees on that.

And yet he comes before this Commission on Monday, at which occasion we learn his position, partially, that is that he's not in agreement; that he seeks a private conference to tell the Commission as well, we assume, as the government why he's not in agreement. On Wednesday we met Ms Crotty's request to have a meet with her and with Greg Bennett. None of these issues, apart from two, were raised.

Ms Crotty was of the view that there wasn't any point in talking further. I agreed with her. And that is the first and only meeting I've had with Ms Crotty or the Hospital Employees Federation since May, outside of the TTLC.

I'm not sure what information Ms Crotty is getting or where she's getting it from or why she's putting such misinformation to the Commission. But I resent it most strongly.

Now, having said that to correct our side of the record, if the Commission is of the view that these matters can be speedily resolved by way of conference, I will accede to Ms Crotty's request to the Bench. But I just wish - I just wish - for once that the Hospital Employees Federation would sit down and talk to us as they claim we ought to be talking to them.



PRESIDENT: So you're ... would you be prepared to go into private conference without the Bench and we resume again, say, at 3.00 or something of that order?

MR WILLINGHAM: Mr President, under the circumstances I believe I would prefer that the Bench hosted the conference.

PRESIDENT: We'll return again at 2.15 and then proceed into private conference to consider these matters.

#### LUNCHEON ADJOURNMENT

PRESIDENT: We'll go ... unless anybody wants to provide any further preliminaries we'll go straight into conference.

#### INTO CONFERENCE

PRESIDENT: Good, we're back on record. Thank you.

MR VINES: Thank you.

COMMISSIONER WATLING: It's like Christmas.

MR VINES: Mr President, members of the Bench, with the benefit of the adjournment we were able to have brief discussions, or the secretary of the Trades and Labor Council and myself were able to have brief discussions with the secretary for the Department of Premier and Cabinet, and indeed our understanding of the situation has been confirmed, and to clarify the situation we have proposed a series of change of words for Item 3.1 of Exhibit 3.

It is ... if I just read them quickly first, Mr President, and then come back to it slowly.

It is proposed to delete the first part of the first line so that it would now read:

Guidelines for the process of implementation of changed span of hours will be agreed and circulated by 30 August. The guidelines will address issues such as:

- notice required
- consultation with unions
- consultation with employees, and
- arrangements and timetables to effect changes.

The attachment is acknowledged as the government's intent and will be subject to negotiation to conclude no later than 30 August 1990.

So what that in fact means, Mr Commissioner ... Mr President, is that that attachment is indicated as the government's intention, not the union's intention, that we are committed to negotiating that up until 30 August.

PRESIDENT: Yes, thank you, Mr Vines.

MR WILLINGHAM: Just for the Minister's part, Mr President, that is an agreed amendment and it's our belief and our hope that it might solve the problems at the Hospital Employees Federation .... the document.

PRESIDENT: Thank you. You will provide us with a fresh page 3 please?

MR WILLINGHAM: Yes, at the moment we can get to the Premier's word processor.

PRESIDENT: Thank you. Ms Crotty?

MS CROTTY: Yes, sir, there's one threshold issue I'd like to put on transcript. I'm not going to harp on it but I do believe that in Mr Willingham's submission earlier on this morning he alluded to the fact that I may be coming before this Bench and not representing matters of truth. I'd like to put on transcript that I refute that, and in fact I have on this occasion decided to take the higher ground and not in fact challenge Mr Willingham on that ... on the issue. I did originally think of actually putting Mr Greg Bennett and Mr David Rees into the witness stand to actually substantiate the fact that ... in fact 9-day fortnight and other matters on Exhibit 3 were in fact discussed with Mr Willingham, but I propose to say no further to that, sir, but I'd like that matter to go on transcript.

I am also pleased to put before the Bench that HEF has agreed to the position outlined in Exhibit 3 on the ground that those amendments put by the TPSA are accepted by all parties and I'm pleased to note that the point that we were ... we took great pain at the span of hours has now been clarified and I understand that clarification is that that attachment in relation to span of hours is recognised as a government document and not a document that's been conceded to by the unions, particularly the HEF. It's subject to negotiations, and negotiations should be concluded by 30 August. If there's no agreement that the matters that are under disagreement will come back to this Bench for subsequent arbitration.



With that in mind we feel quite comfortable enough now to go back to our membership and indicate to them what in fact the agreed position is in respect to the second instalment 3%.

PRESIDENT: That includes your previous objection to matters of sick leave and the appellate jurisdiction?

MS CROTTY: We understand that on clarification there, that our worries have largely been alleviated there, sir, and we don't have strong objections to those extraneous points that I put before. We believe that they can be fixed up with ...

PRESIDENT: Does that mean that the union is now agreeing or it has to wait until it confirms with its membership?

MS CROTTY: No, I am under instructions from the general secretary of the HEF to say that notwithstanding that those amendments are put by the PSA and consented to by the government and incorporated into this agreement, we don't have any formal disagreement with the document.

PRESIDENT: Thank you.

MS CROTTY: In respect to Exhibit W.2, my colleague Mr Richard Warwick would seek leave to put our position on that document. If it so pleases.

PRESIDENT: Yes. Thank you very much.

COMMISSIONER GOZZI: Well, can we just have that change? I know you'll give us an amended page, but just so I can get this.

MR VINES: Would you like me to read about how it came about, Mr Commissioner?

COMMISSIONER GOZZI: No thanks, Mr Vines. That won't be necessary.

MR VINES: You may well enjoy it.

COMMISSIONER GOZZI: I'm sure.

MR VINES:

Certain informal discussions have taken place involving a full and frank exchange of views out of which there arose a series of proposals which, on examination, proved to indicate certain promising lines of inquiry, which were then pursued, led to the realisation that the alternative courses of action might in fact, in certain circumstances, be susceptible to discreet modification in one way or another leading to a reappraisal of the original

areas of difference and pointing the way to encouraging possibilities ...

PRESIDENT: Is this still the one sentence?

MR VINES: Yes.

MR BACON: This is an agreed position.

MR VINES:

... possibility of significant compromise and cooperation which it bilaterally implemented with appropriate give and take on both sides could, if the climate were right, have a reasonable possibility at the end of the day of leading, rightly or wrongly, to a mutually satisfactory conclusion.

We understand the author of that is in fact the secretary for the Department of Premier and Cabinet.

PRESIDENT: I can understand why.

MR BACON: What it means is we get a deal.

PRESIDENT: Sorry?

MR BACON: It means we did a deal.

COMMISSIONER GOZZI: You say that ...

MR VINES: The change to the wording ...

COMMISSIONER GOZZI: You can say that again with a glass of water.

MR VINES: The change to the wording was delete the words 'the attached is agreed on the basis that' and start with a capital 'G' for Guidelines, 'Guidelines for the process of implementation of changed span of hours will be agreed ...' et cetera.

COMMISSIONER GOZZI: Right.

MR VINES: And then below the dot points, 'the attachment is acknowledged' ...

COMMISSIONER GOZZI: The ...

MR VINES: ... 'attachment is acknowledged as the government's intent and will be subject to negotiation, to conclude no later than 30 August '90'.



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

MR WARWICK: Thank you, sir.

In respect of Exhibit W.2 and all that it contains ... and the document really teases out some broader issues, particularly, I guess, more so as they relate to V.4, as it was, and their position was still being discussed in relation to that document the last time we were here. And our position is that we support the four-stream proposal. We do not necessarily support and therefore maintain a 'without prejudice' position in relation to the four awards in the longer term.

So the important point in respect to this document is that we support the timetable and will participate in the committees, but we do so with the full intent and expressed desire to establish an industry award within our sector in time.

And perhaps as a final point for the record, we will also be pursuing with the government certain proposals we have, as we mentioned last time, in relation to workplace award restructuring implementation committees. If the Commission pleases.

COMMISSIONER WATLING: Does that mean you agree with W.2?

MR WARWICK: That's correct.

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

MR O'BRIEN: If the Commission pleases, our position in relation to Exhibit W.2 is that it's agreed in the context of certain statements which I've agreed with Mr Willingham and I tender a copy of that, which I understand you each have.

PRESIDENT: Yes, thank you.

MR O'BRIEN: Headed, 'Agreed between the Federated Miscellaneous Workers' Union of Australia and the Tasmanian Government', and you'll see that we accept Exhibit W.2 subject to two qualifications - which is set out there:

There shall be a negotiating group established to review the Miscellaneous Workers (Public Sector) Award which is in place; and

2. The agenda items currently on the table between the FMWU and the government, together with the matters referred to in Exhibit 3, shall be the primary agenda to be discussed by this negotiating group.

Subject to those qualifications we accept W.2.

PRESIDENT: Thank you, Mr O'Brien. Mr Devine?

MR DEVINE: Mr President and members of the Bench, I beg your indulgence. I know these proceedings have been long and drawn out, but this morning when we received W.2 we had little time to consider it, and whilst we don't back away from any agreement that we've made in respect of Exhibit 3 or, in fact, W.2, I'd beg to seek some guidance from the Bench in line with the fact that the present wage fixing principles under SEP allows for two stages of 3%, the second of which we've been discussing in the past 2 days of hearing, and allows a component to negotiate above and beyond that 6% in the form of a special case.

Now, the UFU, on behalf of the Fire Brigades Award along with other certain awards have agreed ... or achieved that situation of arguable case under special case, but I'd like some guidance with respect to the document W.2.

On page 2, the sorts of things that allude to ... the middle of the page:

The parties agree in principle to a reduction in the number of classification levels in awards where appropriate as an outcome of the job design process.

Now, I realise that that's to do with multiskilling, broadbanding, etc., but the question that I ask is, how far down the track during the negotiations once we've achieved the second 3% can the W.2 document be applied when we're attempting to deal with a special case?

Now, it might be a difficult question, and I see some people scratching the backs of their ears, but I see it as a problem in the future when we are dealing today with the second 3%.

Three or four months down the track when we are attempting to deal with a special case I just wonder how much application this document might have upon it.

Now, if I can be shown to be totally misled or that my fears are unfounded, I'd be very appreciative of such guidance.

PRESIDENT: Well, this document has got a life through to 1992. In respect of operational services, all groups have got to conclude and report back by 24 December 1990.

I would suspect your special case would be somewhere in between now and 24 December 1990.

COMMISSIONER WATLING: And, in any case, the operative date for any special cases is not before 1 January 1991.



MR DEVINE: Yes, and I concur completely with that, Commissioner, but maybe I've not made my position clear, or my difficulty clear, in that the United Firefighters Union all along have had no difficulty in negotiating restructuring in line with the 3%, and have done so in a, we believe, sincere and constructive manner.

The difficulty that I've got is where the cutoff is likely to be in respect of the 6%, and any special case that we may argue.

COMMISSIONER GOZZI: I think the question, Mr Devine, is, will the special case be applied, or have regard to the award as it is before it is restructured, if you like, and consequentially anything that might come out of this document W.2.

I don't know, but I suspect that the special case would run on the existing award classifications and the outcome translated into the new structure.

Now, that's off the top of the head, but that would seem to be a logical approach to it.

I think that would address your concerns. So you are building a structure, a special case has to run, and most of those special cases are, in fact, work-value cases, and the logical thing to happen, I would think, is that the outcome applies on the existing award and is then translated into the new structure.

MR DEVINE: I can accept that, Commissioner, as the ...

COMMISSIONER GOZZI: Well, I mean, I am just trying to assist you. Others might have a different view. There seems to be ...

PRESIDENT: I don't think your position is ... your special case position is threatened in any way by anything that's taken place at the moment.

COMMISSIONER GOZZI: No.

MR DEVINE: I accept that then, Mr President, and I simply say that I had reservations about it and felt that it was necessary that I raised it.

PRESIDENT: I wasn't under the impression that the special case would be dispensed with because we've reached some agreement in relation to the second adjustment.

MR VINES: Could I just confirm that, what you have said, Mr President, from the people who are involved in the negotiation of W.2.

What you're saying is exactly right, that there is no intention whatsoever that special cases would be in any way jeopardised by this and, indeed, the sort of process that Commissioner Gozzi has referred to is what's in our mind for special cases as well.

So I don't think that organisations in the position like the UFU have anything to fear through the process - in fact, quite the contrary.

PRESIDENT: Yes. Thanks. I take it nobody else wants to put anything further in relation to the matters we have been progressing today.

We have a concern about varying awards which have as parties to them organisations which haven't been present during these proceedings, and we are worried about the way in which we can obtain an understanding, or a commitment, from those organisations to accept these documents.

We were thinking that it may be appropriate to hold some small commitment-type hearing. Has anybody got a view on that?

MR BACON: Mr President, I'm not aware of how many actually were here and how many weren't, but I don't envisage any problems in either getting commitments in writing for you prior to any award variation or, alternatively, having a hearing when people could come and do that.

Certainly, from our point of view, all the public sector unions have had notice from us and have been able to attend, and a number have attended that haven't been present at these hearings. But I don't envisage there would be any problem going either way.

COMMISSIONER WATLING: You see, really, this particular case only relates to the matters that we've been calling and it doesn't relate to any others and therefore the operative date that you've suggested only really relates to the applications before us.

MR BACON: Yes. Yes. Were you referring to unions that are parties to those awards listed that haven't been present?

PRESIDENT: Yes, I was originally, and Commissioner Watling has raised some other matters, really.

COMMISSIONER WATLING: Well, I'm saying the same thing.

MR BACON: I think they're in a different position than the ones I was thinking of, Mr President, because as parties to the awards they would have been notified of all the hearings, and we certainly wouldn't want to see those who have been



present and participated held up because others haven't, for whatever reason, turned up to hearings.

COMMISSIONER GOZZI: Well, it begs the question, Mr Bacon, that all those other employee organisations party to the award that are listed before us, if they turn around and not commit to W.2 and Exhibit 3, that would give us a problem.

COMMISSIONER WATLING: Because you haven't got an agreement.

MR BACON: I have got a problem, because I don't know who we are talking about, so I don't know if it's a problem or not.

COMMISSIONER WATLING: Well, that's where I think the homework has to be done. We might find if we go through all the applications that are currently before us to decide the issue, if we actually do the homework we might find that all the unions parties to those individual awards may have already signified today their agreement with the document.

MR BACON: Well, that's the question I was ... yes.

COMMISSIONER WATLING: But, someone has to do the homework to find out whether they have.

PRESIDENT: One that comes to mind is the ETU. I don't know how many others there might be.

MR VINES: The ones that I can see on the list, Mr President, would be the ETU (the hot goer), the PKIU, Salaried Medical Practitioners have appeared in the proceedings, haven't they? Yes.

COMMISSIONER WATLING: But they haven't given any commitment about this.

PRESIDENT: No.

MR VINES: The Tech. Colleges ... no, sorry, the Tech. Colleges Staff Society their award isn't included in the application.

MR WILLINGHAM: Nor is Medical Practitioners.

MR VINES: Sorry, you're right.

COMMISSIONER WATLING: No, Medical Practitioners aren't included.

COMMISSIONER GOZZI: That comes down to about three so far.

MR VINES: That's right. They would be the only ones, because none of the other awards that we have ... are, in fact, listed before the Commission. So it would be ...

PRESIDENT: Could we leave that with you, Mr Bacon, to do something about it?

MR BACON: Mr Vines has volunteered to look after hot goer, and I'll look after the real unions.

COMMISSIONER WATLING: Is that a local race horse, Mr Vines?

MR VINES: If it is, sir, I wouldn't back it.

MR BACON: It's going a bit slower than it used to.

PRESIDENT: Well, is there anything further?

MR BACON: The only other thing remaining, Mr President, is when we might have a decision.

PRESIDENT: Yes.

COMMISSIONER WATLING: It will probably take a month to sort out the submissions.

PRESIDENT: That's a reasonable question.

Well, thank you very much for the very efficient manner in which this hearing has been processed.

It is now concluded. Our decision is reserved.

HEARING CONCLUDED