

IN THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

COMMISSIONER SLOAN

5

PARRAMATTA: WEDNESDAY 31 AUGUST 2022

10 **2022/00254412 - PUBLIC SERVICE ASSOCIATION AND PROFESSIONAL
OFFICERS' ASSOCIATION AMALGAMATED UNION OF NEW SOUTH
WALES AND INDUSTRIAL RELATIONS SECRETARY IN RESPECT OF
DEPARTMENT OF REGIONAL NSW, DEPARTMENT OF PRIMARY
INDUSTRIES - FISHERIES**

15 Notification of a dispute under s 130 of the Industrial Relations Act 1996

COMPULSORY CONFERENCE

20 Mr S Howes for the Public Service Association and Professional Officers'
Association Amalgamated Union of New South Wales, with
Mr J Wright and Mr M Proctor via telephone link
Ms J Granger for the Department of Regional NSW, Mr A Royal,
Mr D Rumbold and Mr A Moriarty via telephone link

25

TELEPHONE LINKS COMMENCED AT 10.35AM

30 COMMISSIONER: First and foremost, my apologies for keeping you all
waiting before coming on the line today. I had to deal with something that
came up unexpectedly. Just as another preliminary matter, Mr Howes, the
notification names the respondent as the Department of Regional NSW,
Department of Primary Industries - Fisheries. This is me being a pedant, but
my understanding is that the proper respondent is actually the Industrial
Relations Secretary in respect of the Department of Regional NSW. Would
35 you accept that?

HOWES: I would, Commissioner, that is unfortunately my error.

40 COMMISSIONER: No, as I say, I'm a stickler for form, as you no doubt
appreciate. Ms Granger, do you have a problem with the name of the
respondent being changed accordingly?

GRANGER: No, Commissioner.

45 COMMISSIONER: Thank you, then I direct that the name of the respondent
be changed to the Industrial Relations Secretary in respect of the Department
of Regional NSW, Department of Primary Industries. Mr Howes, it's your
notification?

50 HOWES: My apologies, Commissioner, there's some building work just going

on with the PSA House this morning. I had to just sort of put a cease to it. If I may have some latitude, Commissioner, I'd like to begin with a little bit of contextual background and a little bit of history if that's okay.

5 Fisheries officers are primarily tasked with the delivery of compliance and regulatory services under both the Fisheries Management Act and the Marine Estate Management Act. There are currently 105 effective full time fishery officer positions across New South Wales and they are situated all the way across the state providing vital service delivery in both marine and freshwater environments and whilst many of the functions of fishery officers are associated with regulatory in-field operations, all fisheries officers work out of an identified fisheries compliance district which is an identified single office or station. Each station's duties comprises of a minimum of two staff, usually a district fisheries officer and a fisheries officer who are mutually housed out of the same physical office location.

Now, the move towards minimum two-person districts several decades ago was primarily to address the significant work health and safety risks that resulted from fisheries officers delivering regulatory and compliance services one-up without any assistance or backup. Now, we'll also mention part of these processes, but the recent independent safety reviews undertaken by DPI Fisheries have recommended to DPI Fisheries management that single-person patrols should not occur when possible so I'd like for you to take that one as a little bit of kernel as part of this process, Commissioner, because we believe that that is one of the consistent and concerning applications to this particular proposed reform.

The substance of the dispute relates to the staffing and reform of the South West Slopes and Monaro inland fisheries compliance districts and the failure of the New South Wales DPI Fisheries to properly consult on the substance of major reform with the employee representatives and the PSA and the reform essentially seeks to maintain these two compliance districts and move forward with a pseudo merged district.

35 This will result in the formation of a single two-person district where the district fisheries officer is stationed at Jindabyne and the fisheries officer is stationed at Tumut and the primary issue here being the result of the reduction in resources across this vast geographical area formerly staffed by four people and the resulting work health and safety risks created by reverting back to single-officer stations and the inevitable increased travel and field patrol duties that each staff member will be faced with. Might I add, Commissioner, at this period of time Tumut is a district that was previously merged to incorporate the district of Yass as well. So we are now in a process of combining districts that had previously been combined.

45 By way of background, the Monaro fisheries district is based out of Jindabyne and has a complement of two staff that is made up of a district fisheries officer and a fisheries officer and at this point in time the fisheries officer role is vacant. The South West Slopes fisheries district is based out at Tumut and has a complement of two staff that is made up of a district fisheries officer and

a fisheries officer and at this point in time the district fisheries officer role is vacant. The respective fisheries compliance districts share a common boundary and the distance between the corresponding office locations is some 210 kilometres over mountainous regional roads that are sometimes closed
5 due to the hazardous alpine weather. The fisheries officer role at Jindabyne has been vacant since December of 2020 and the district fisheries officer role at Tumut has been vacant since 2019 in April.

10 From the perspective of the PSA this gives rise to significant work health and safety risks for the effective codification of one-out working. Reform proposals have been flagged with staff in the respective locations as early as June '22. However, formal reform proposals were not subject to discussions with
15 employee representatives until Monday 22 August. Other reform proposals including the closure or the potential closure of the Jindabyne district office was floated by the DFC with staff previously.

20 Now, obviously this did not take place. However, this illustrates to the Commission that there are some proposals which are discussed and there are some proposals that actually come into effect.

25 Fisheries officers vocation branch chair Matthew Cartwright was made aware of the reform at 2pm on Monday 22 August and the FOVB, as in the executive group of the union arm, wrote to the director of fisheries compliance on Monday 22 eliciting a number of concerns on the proposed reform of the
30 Monaro and South West Slopes fisheries districts, especially around the lack of consultation and major work health and safety concerns.

35 After providing the DFC, the director of fisheries compliance, with basic correspondence in reply to the proposal, PSA representatives also reached out to the Department of Regional New South Wales industrial relations branch on
40 Tuesday 23 August to further outline those concerns. The PSA maintains that the industrial relations branch was not necessarily aware of the reform proposals that had been outlined by the DFC.

45 On Wednesday 24 August the programme leader special operations inland of the fisheries compliance branch met with affected individuals from both Tumut and Jindabyne offices to advise of the decision to delete the roles of the
50 respective districts and merge the two as a quasi single standalone district that operates from the two physical locations Jindabyne and Tumut. Despite the previous statements by the PSA on the requirement for extensive consultation primarily on the work health and safety interests that are yet to take place, the approved reform deletes roles from both Tumut and Jindabyne districts in an effort to create two new fishery officer roles for an inland mobile investigations team based in Albury.

Whilst there has been a small level of validity in the rationale provided by the DFC and the DR New South Wales industrial relations branch about the
55 difficulty to fill regionally based fisheries roles, there is also a concern that DPI fisheries' inability to recruit to several of these regionally located roles, especially the ones that we're talking about being affected now, has largely

been a concerted construction, rather than a misalignment of either individual preference for location. The PSA can confirm that there have been other officers who have submitted their preference for either location and decisions not to fill these locations confirm to the PSA that there was a decision to delete officer roles well before such alleged consultation took place.

Furthermore, the lack of appropriate risk assessments and subsequent legislative consultation on the work health and safety consequence for such reform is simply unacceptable. At this point in time, Commissioner, I would like to add that there has been significant unrest within the PSA membership about this type of reform with the PSA being bombarded by a raft of members highly anxious about the implications for those affected officers, as well as the implications for the codification of one officer station. The PSA maintains the concerns that this reform has become somewhat a line in the sand for fisheries officers and, once crossed, the concern is that this will deliver a result of significant workplace disruption and disputation.

Part of our submission, Commissioner, is that the PSA contends DPI fisheries has failed to adequately consult on the proposed reform in accordance with cl 9 of the fisheries award and cl 65 of the parent agreement and also the requirements to consult under the Work Health and Safety Act.

Now, the Commissioner might ask about this alleged consultation that had taken place and why it should not satisfy the PSA. The only thing that I would say with regards to this is the lack of paperwork in the form of any change management plan or appropriate risk assessments associated to such reform, as well as the lack of involvement from the industrial relations branch of this organisation should be a dead giveaway that the appropriate and legislated consultation obligations of the agency have not been met.

As part of this process, Commissioner, we are seeking your assistance in terms of this conciliation and we would like to flag at this point in time that as part of those processes the association would be seeking a recommendation that the current provision of the status quo arrangements would be made.

GRANGER: I submitted a document late yesterday. Did you receive a copy?

COMMISSIONER: I did receive a copy. I haven't had a chance to read it closely but, yes, I've received it.

GRANGER: I'll read through some of that then in response, Commissioner. So this dispute relates to the location of two fisheries officer roles and our proposal to move the location of two fisheries roles from Tumut and Jindabyne to enable the department of fisheries compliance function to fill some very long-term vacancies that have been carried for up to two years, despite genuine efforts to fill them. We would move the roles and this will enable creation of a mobile squad of fisheries officers based out of Albury and they would be able to support various areas, including Jindabyne and Tumut.

We have put the changes on hold for now, so the status quo remains while we

have these discussions.

5 The department disagrees with some of the assertions set out in the dispute and that Mr Howes spoke about just now. This dispute has been lodged on the basis of a lack of consultation and we can demonstrate that consultation has occurred with affected employees and also the fisheries officers vocational branch.

10 The FOVB was advised of the proposed changes on February 3rd where the chair of the FOVB was advised about the changes in a phone call from the director of fisheries compliance. He also in that call said that those changes would be put into a brief for approval. I'd like to clarify that some of the other changes that were discussed weren't put into a brief, to my understanding, for approval. So this one was more serious.

15 The FOVB was then updated on Monday 22 August when the changes had been approved and the FOVB then raised a number of issues to the director fisheries compliance.

20 Affected staff were consulted on the changes from 31 May prior to the briefing being put up for approval and then they were briefed again after approval and they have provided some feedback.

25 The FOVB and PSA had an opportunity to provide ideas and raise issues at any time from February the 3rd up until now and we are of the view that we have consulted. Employees have been provided with an opportunity to provide feedback prior to the development of the business case and also following approval of the change.

30 The second point I'd like to make is that we have engaged in significant consultation on work health and safety and in particular the issue raised in the dispute about single officer working safety management and we're awaiting a response from the FOVB and the Public Service Association on this particular matter. So a number of the issues referred to in the dispute concern lone workers or single officer patrols. Currently fisheries compliance have strong safety systems in place for lone worker safety and also the management have put forward some plans to improve them. The current system we have to manage risk around single officer patrols include remote and isolated work critical risk control, SafeWork management systems, field work operations including difficult terrain and working onboard watercraft, and a number of other systems that we've got listed in the document I've sent through.

45 In 2021 fisheries compliance engaged an external consultant to undertake a safety review of fisheries compliance operation and one recommendation from this review was to develop a comprehensive best practice officer safety framework to manage the risk of assault, including modifying the guidance around working alone to introduce a risk assessment approach to support officers making appropriate judgments and staged decisions about activities they're planning to do, and this was built into an action plan to implement the recommendations of the fisheries officer safety review as follows, and the

50

recommendation was:

5 “Implement a risk-based planning approach to working alone. All activities should require a minimum of two officers unless a risk assessment can satisfy that the planned activity is low risk and can be conducted safely by one officer.”

10 So it didn't actually say that officers should never work alone. It says that they should not work alone unless the activity is low risk. So the action plan is aiming to do that risk assessment, the management of the FCU working with the Regional New South Wales safety team and that that risk assessment would then be put up for consultation.

15 This action plan was sent to the FOVB by the director fisheries compliance on Wednesday 15 June, calling for feedback by 1 July prior to finalising and implementing the plan. The director of fisheries compliance hasn't received any feedback on this action plan on the review and is awaiting feedback prior to implementing the plan, and we continue to be open to feedback on that acting plan and encourage it.

20 Lastly, the situation with the two roles in Jindabyne and Tumut has been difficult to fill and long-term vacancies have been a known issue for more than two years, and this is placing a strain on the employees carrying the two vacancies. Management have genuinely taken all reasonable steps to refill the role, including advertising multiple times and being able to get approval to offer TECA(?), which is relocation assistance. Fisheries compliance have not been able to secure the right candidates to fill these roles and they've carried two less staff for more than two years and this is putting a genuine strain on other employees in fisheries compliance to meet compliance requirements, and we have been asking people to travel long distances. The fisheries officers, FOVB and the PSA also had the opportunity to provide feedback, comment or put forward any ideas on how to manage this situation other than the status quo or continuing to try to fill the vacant positions, as this clearly has not worked.

35 The solution that has been put - approved is a sound one. The creation of the mobile squad will allow us to focus on priority areas and provide support to Tumut and Jindabyne.

40 We welcome your assistance, Commissioner, to conciliate this matter, particularly on how we manage the safety elements, while pressing that operationally the fisheries compliance unit need timely outcomes relating to this, as there is the desire to fill the two roles so that the continued strain on resources and workloads of staff can be managed.

45 HOWES: Commissioner, at this point in time, and I've had some discussions with my leaned colleagues on the opposite side, we believe that probably entertaining private conference with respect to any further conversations might be of assistance, if you think that that would be a warranted move,
50 Commissioner.

COMMISSIONER: Ms Granger, any opposition to going off record?

GRANGER: No, that sounds good, Commissioner, thank you.

5 RECORDING EQUIPMENT SWITCHED OFF AT COMMISSIONER'S REQUEST

10 COMMISSIONER: I have conferred at some length with the parties off the record and, while they have not been able to agree on terms to resolve the notification, there have been productive discussions as to next steps. Having conferred with the parties, I am authorised to put the following matters that arose during private conference on the record.

15 First, the department will provide to the PSA a draft risk assessment in respect of its proposal that Tumut and Jindabyne become one-out operations. That will be provided no later than 12 September 2022.

20 Second, the department has given the Commission a commitment that while it will commence the recruitment process in respect of the proposed new Albury based positions, it will not proceed to make offers to any candidates, nor will it enter into any arrangements by way of the purchase of property or any other means that would oblige it to proceed to move to offers in respect of any candidates. The department will not move on that commitment without first bringing the matter back before the Commission.

25 Before I move to make a direction, Ms Granger, does that accurately reflect the department's position?

30 GRANGER: Almost, Commissioner. You mentioned one-out operation, which I would like to replace with the words "single officer patrols".

COMMISSIONER: That is noted, thank you very much, Ms Granger. I was adopting a shorthand that was provided to me. I didn't mean to misstate the situation.

35 GRANGER: No problem. Otherwise, yes, it sounds correct to me, thank you.

COMMISSIONER: Mr Howes, any concerns from your end?

40 HOWES: No, Commissioner. We've already established that this will provide the PSA and the IRC assurances that if this matter does not satisfactorily finalise, that there will still be processes that can be undertaken by this Commission to progress those to arbitration if required.

45 COMMISSIONER: Yes, thank you, Mr Howes. Well, it remains my fervent hope that it is not going to be required to progress the matter to arbitration and so I wish the parties all the best in their discussions. Simply to ensure that the matter remains front of mind, I will stand this matter over for report back by telephone at 9am on 23 September 2022.

50

Anything else for you this morning, Mr Howes?

5 HOWES: Commissioner, is it at all possible that we can seek a copy of the transcript? That way we have some material and something concrete where we have the ability to take back to the affected members themselves but also the rest of the fisheries officers vocational branch.

10 COMMISSIONER: Mr Howes, you are at liberty to apply for the transcript, of course, but unfortunately I am not in a position to make that available to the parties free of charge. That is an application that I think can be made to the registrar but not something about which I have any power whatsoever, unfortunately.

15 HOWES: Not even being able to put it to the top of the list?

COMMISSIONER: I will seek a copy of the transcript on an urgent basis.

HOWES: Thank you very much, Commissioner.

20 COMMISSIONER: Anything else for you this morning, Ms Granger?

GRANGER: No, Commissioner. Thanks for your assistance today.

25 COMMISSIONER: Then the Commission adjourns.

TELEPHONE LINKS CONCLUDED AT 11.38AM