

AUSCRIPT AUSTRALASIA PTY LTD

ABN 72 110 028 825

Suite 25, Trafalgar Centre 108 Collins St HOBART Tas 7000

Tel:(03) 6224-8284 Fax:(03) 6224-8293

AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 34201

TASMANIAN INDUSTRIAL COMMISSION

**PRESIDENT P.L. LEARY
COMMISSIONER T.J. ABEY
COMMISSIONER J.P. McALPINE**

T No 12870 of 2007

T No 12871 of 2007

**ADMINISTRATIVE AND CLERICAL EMPLOYEES,
OPERATIONAL EMPLOYEES, PROFESSIONAL
EMPLOYEES, TECHNICAL EMPLOYEES AND COMMUNITY
AND HEALTH SERVICES (PUBLIC SECTOR) AWARDS**

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Minister administering the State Service
Act 2000 to vary the above award re arbitrated
safety net adjustment and award review process**

HOBART

10.00 AM, MONDAY, 23 APRIL 2007

Continued from 15.3.07

HEARING COMMENCED

[10.06am]

PN372

THE PRESIDENT: I think the parties were advised prior to today that we would be sitting as a two thirds Full Bench, in the absence of Commissioner McAlpine. I don't think there was any objection to that for the purpose of the report back. Okay, we will have a report back. Mr Tullgren, are you spokesperson or Mr Baker?

PN373

MR TULLGREN: If your Honour pleases. The report back I make only relates to the position - - -

PN374

MR BAKER: Perhaps if I - - -

PN375

THE PRESIDENT: They are your applications, aren't they?

PN376

MR BAKER: Yes.

PN377

THE PRESIDENT: Yes.

PN378

MR BAKER: I should - - -

PN379

THE PRESIDENT: I am sorry, that is my mistake.

PN380

MR BAKER: Monday morning.

PN381

THE PRESIDENT: Yes, and traffic jams and things.

PN382

MR BAKER: Yes, I can sympathise. Since we were last before the Full Bench, there have been a series of discussions - namely in the first instance between Mr Tullgren and myself. Mr Tullgren has formulated a position paper which I will allow him to discuss, if he wishes to, on the transcript. Secondly, there have been a - there was a broad discussion between representatives of the public sector management office and of unions generally last week, concerning the issue and there has been a debate about how we should proceed with the matter, in so far as it relates to the safety net, that is the wages component of the safety net.

PN383

I understand Mr - I am sorry, I will just go back a moment. We, as I said, there has been some considerable discussion in relation to how we should move the matter forward in relation to the wage fixing - how we should move forward when looking at the wage fixing principles as announced by the Full

Bench, in its July 2006 minimum wage decision. We see that the Commission's principles at the present time, posing an impediment to us to proceed in the manner in which we have sought to proceed.

PN384

We seek some guidance from the Commission this morning in relation to the process and procedure, but I think there may be some degree of uniformity between us this morning, in as much as that we - that is, both the Government as the employer and the unions who represent the employees, making an application to the Commission to review the wage fixing principles. The timing of that review, in our view, would be appropriate when the Full Bench next meets to determine the state minimum wage.

PN385

We believe that process should be an open and transparent process in which all parties to the Commission may make some submissions, if they so desire.

PN386

THE PRESIDENT: Certainly, any application to review the principles would require all interested parties and some disinterested parties, I guess, to make an appearance and be heard.

PN387

MR BAKER: Yes, President, yes. The issue is somewhat complex, given the nature of the current status of wage determination within the Federal jurisdiction, or outside the Federal jurisdiction, as it now resides.

PN388

THE PRESIDENT: Well, outside the Federal Commission.

PN389

MR BAKER: Outside the Federal Commission, thank you. So, as I have indicated, we would seek some guidance from the Bench in the manner which may progress safety net adjustment process forward, but it would be our submission to the Bench that either the employer, as the original applicant, or as the applicant before you today, should draft an application to seek a review of the wage fixing principles in an appropriate form that allows us to proceed to give effect to providing an effective award safety net that is reflective of wage rates within the state public service.

PN390

THE PRESIDENT: For the principles to look at paid rates awards rather than safety net awards, is that the sort of general - - -

PN391

MR BAKER: I would not care to refer to them as paid rates awards. I believe we should still maintain the concept, even within our thinking - thought patterns, that they are in fact minimum rates awards. But that is something that we need to - something for the future.

PN392

THE PRESIDENT: Something for the future, yes. I just don't want us to get bogged down in terminologies when perhaps there is not an understanding between us what the terminologies mean.

PN393

MR BAKER: Precisely.

PN394

THE PRESIDENT: Yes, so that is something that we could explore on another day.

PN395

MR BAKER: At a later date./

PN396

THE PRESIDENT: Yes.

PN397

MR BAKER: I will conclude there and I will wait.

PN398

THE PRESIDENT: Thank you. Now, Mr Tullgren?

PN399

MR TULLGREN: Thank you, your Honour. Your Honour, as far as Mr Baker's hope that there is a shared view about his application, there certainly isn't from us and we will oppose any application that he makes to seek to review the state wage principles. So that he is under no illusion what our position will be. We do so simply because it is unnecessary, with respect. And we say it is unnecessary because the current wage fixing principles established by this Commission, together with the provisions of the Industrial Relations Act, we submit would allow the process of updating all the relevant public sector awards or wages to occur within the principles, without the necessity to disturb those principles, vary those principles, or perhaps, more importantly, to do some violence to the principles as part of the process.

PN400

THE PRESIDENT: Certainly, as far as the safety net adjustments are concerned.

PN401

MR TULLGREN: We would go further than that, your Honour, and that brings me perhaps, neatly to the position that we would put and that is that on the 4 April - and those that instruct me wrote to all of the unions that were present at the proceedings on the last occasions, and as well to Mr Baker, and provided a proposal which was a five step proposal for dealing with those issues. Now, subsequently and for the purposes, to ensure completeness, the LHMU wrote to both you, Madam President, and to both Commissioner Abey and Commissioner McAlpine, attaching a copy of the proposal.

PN402

That was done prior to the proceedings, simply so that it would assist in the Commission being able to visualise the approach that we were - proposed to

take. Now, I might indicate that in response to the matter, the proposal we put to the other unions, there has been no response. So, whether silence means consent or silence means they were so thunderstruck by the proposal that they are not able to respond, I am not in a position to indicate. But my friends, I am sure, will do that. I have some additional copies of the document.

PN403

But as members of the Commission can see we say that there is effectively a five step process to be followed. The first of those is to ensure that all awards have relativities that are fixed in accordance with the principles. And, as a result of discussions with my friend, Mr Baker, he advises me that in 1991 the Commission performed some analysis or function of awards which would or could be said was in fact, fixing the relativities. So that that - there is an argument that that step has already been completed.

PN404

THE PRESIDENT: That is something that would have to be checked, I presume.

PN405

MR TULLGREN: The second step would be then to take all the safety net adjustments since that time and add those to the rates that were the result of the properly fixed minimum. You then add those two figures together to get what become the properly fixed minimum classification - rates for all of the classifications, then you insert the - all the rates from the expired enterprise agreements, however titled, then you add that amount to the amount of the properly fixed - the minimum rates as a result of step three.

PN406

And you then establish a properly set rate. Now, we have identified the various principles that we say would have application and would need to be addressed. We also have identified that under section 47AA, which is contained in division 2A, that provides for establishing a safety net, a fair minimum conditions of employment, and also that the Commission can make awards or agreements, or in this, relevantly an award in excess of the minimum but not - must not make one below the minimum.

PN407

Now, we say that when you take the combination of the existing principles and the legislation, that it is possible to achieve the outcomes desired, at least, we say by the unions, but we say equally by the Minister, without doing any violence to the existing wage fixing principles. Now, and we would say here that it is a matter that can be supported by argument and we have no difficulty in putting the relevant arguments to the Commission, not today but at a time that the Commission determines to allow the Commission to deal with this matter.

PN408

Having said that, the - we say that there is nothing that has been put in argument to indicate that the suggested course of action that we put to you this morning, is not one that would be successful and we also say that if an application were to be made to vary or review the state wage fixing principles,

then, of course, those principles have application outside of the public sector. You then invite everyone who has or might have an interest to make submissions, not only about any limited matter that which is of more relevance, perhaps, to public sector unions, but, to everything else.

PN409

You have also got some practical problems and that is that the - because of the decision of the higher Court in the work choices case, which have given a quite expansive interpretation of the Commonwealth's powers, particularly about corporations, there are - there is a significant portion of businesses and employees who are covered by the wage fixing principles, that now aren't. Secondly, the High Court has not prescribed the limits of what is a constitutional corporation - - -

PN410

THE PRESIDENT: Regrettably.

PN411

MR TULLGREN: And I, as everyone would be aware, apparently the good burghers of some shire in Queensland have decided that - - -

PN412

THE PRESIDENT: The Banana Shire, what a delightful name.

PN413

MR TULLGREN: Yes, that they should be the ones who will test this matter in the High Court - equally, I note, that the Premier of Queensland looks like abolishing the shire as part of some greater restructuring.

PN414

THE PRESIDENT: Or at least changing its name.

PN415

MR TULLGREN: Yes, which may have some result - but what you have then got is further proceedings - and one of the practical difficulties is that there may well be parties who might have an interest who just say, "Well, we don't know whether we have an interest because we can't be certain at this stage whether we are or are not". And that becomes a practical difficulty for no other reason than if you are reviewing the state wage fixing principles and you are saying to all parties, well, what we want to look at is principles into the future. Well, you don't know whether you are ever going to be subject - it is a bit hard to try to enter into some rational and learned debate about those issues.

PN416

And equally, the other side of that - the obverse side of that coin is that if it is believed that there is - that the expansive view of the Commonwealth about its powers will be further supported by the High Court what is a constitutional corporation is significantly extended. One the questions becomes, well, who is left in the life boat and is it necessary to look at having anything, any principles if - - -

PN417

THE PRESIDENT: Well, those are all issues that would form part of any debate, it may well be that by the time we get to that, we may have a change of government and we don't have to bother, because I think what we are talking about is almost, as I understand it, is the Labor Party policy.

PN418

MR TULLGREN: Well, taking that position and as someone who will be in, perhaps not the most envious position of voting later in the week on whether that policy should actually be adopted - - -

PN419

THE PRESIDENT: I am making no comment on the policy. I am just saying that is my understanding of it.

PN420

MR TULLGREN: No, and neither do I, your Honour - I will be informed by the debate - - -

PN421

THE PRESIDENT: I am sure.

PN422

MR TULLGREN: As I understand the policy that is being proposed, it proposes a friendly take over as opposed to a contested take over.

PN423

THE PRESIDENT: Yes.

PN424

MR TULLGREN: Now, again all of these imponderables bear on this - bearing in mind that when this process began it was a submission of my learned friend, Mr Baker, and the shared position of the unions, that we wanted to get to a process as quickly as possible but, if you accept Mr Baker's opening stance, it was by December to have this process finished. Well, with respect, going down the path of potentially making application to vary the wage principles, I would submit that it could be unlikely, taking into account all of the factors that we have canvassed this morning, that you would, by the end of December, have this matter settled.

PN425

And it is because of our view about these matters that we have put this alternate proposal, I suppose it could be characterised as, but one that actually sets out very clearly what the process would be and how it would be measured.

PN426

THE PRESIDENT: It raises a few questions, though, does it not?

PN427

MR TULLGREN: Yes.

PN428

THE PRESIDENT: I mean, the first question is whether the relativities have been fixed correctly or even fixed. Whether there are properly fixed minimum

rates and then, if you get to stage five, do they then cease to be safety net awards? So, there are questions that need some consideration as part of the discussion.

PN429

MR TULLGREN: Yes, I agree with your Honour and I think, at first blush, I would have to say that from my limited examination of this, whether you could be absolutely confident that there were properly established relativities set in 1991 - - -

PN430

THE PRESIDENT: I don't think that anyone who was here in 1991 is still here. I mean as members of the Commission. I don't mean as participants.

PN431

MR TULLGREN: Yes, and perhaps as Mr Kleyn is the only person among - - -

PN432

THE PRESIDENT: Who is volunteering.

PN433

MR TULLGREN: - - - at the Bar table who is volunteering, any blame can be sheeted home to him if the matter is too difficult.

PN434

MR KLEYN: That is right.

PN435

MR TULLGREN: But - - -

PN436

MR KLEYN: No, I wasn't on the Full Bench.

PN437

MR TULLGREN: But it does raise an issue and clearly we have worked - we have said there, for the purposes of argument, that there was some process in 1991. Now, I do accept that if you look at that process again and found that it was wanting, the process has got to be - you have effectively got to start again. But with respect - - -

PN438

THE PRESIDENT: But it also raises another question, doesn't it? In light of the changes, the dramatic changes, in processing industrial relations these days, do we need to worry - as far as public sector are concerned, do we need to worry about safety net awards, do we need to worry about awards, do we just have agreements, do we have principles at all. There has to be a translation step and that is pretty important but do we need to get bogged down in these sorts of issues because I am old enough to remember why principles were put into place in the first place. Not many people know why but they were put in for a specific reason, that reason really doesn't exist any longer.

PN439

MR TULLGREN: That is - and I agree, your Honour, going back perhaps my memory doesn't stretch back as far as yours, but I do remember again some of those early debates. And I do recall that part of it was that there was a view that there was some naughty unions out there that some principles - - -

PN440

THE PRESIDENT: I think some even thought there may have been some naughty employers who actually agreed with those naughty unions.

PN441

MR TULLGREN: Yes.

PN442

THE PRESIDENT: That was worse.

PN443

MR TULLGREN: There were generally, I perhaps think, to use the Monty Python, naughty persons but your Honour raises questions but my understanding of what my friend, Mr Baker, has been putting generally, is that those that instruct him believe that the current arrangement of awards and agreements should be retained and that they need to be relevant and relevant translates - is to actually contain what are the rates. Because, effectively, there is a strong argument that if the process that we propose was to occur, then what you have got is that the awards do actually, will actually contain the minimum rates of pay because - it is on top of those rates that negotiation for agreements occurs.

PN444

So that they are the minimum rate. However, they accept that there are issues and there may well be divergences but we think, with respect, that it would be more beneficial to look at the process that we have put as opposed to simply, effectively opening up the wage fixing principles on the basis that, as I have said, a lot of the parties who might have an interest to know, are simply not going to know or want to maintain a holding pattern until somebody tells them that they now know what they have got to do.

PN445

THE PRESIDENT: Fair enough, yes.

PN446

MR TULLGREN: Yes, so, your Honour, that would be our proposal and as I say, we are prepared to certainly argue the merits of that at the relevant time but it may well be, that perhaps after further submissions, perhaps adjourning into a conference to explore some of these issues this morning might be beneficial, with respect.

PN447

THE PRESIDENT: I guess one of the things that has been exercising my mind since the application came in is that all of the principles and the system that we use has been inherited, basically from the Federal system. That, for our intents and purposes, doesn't exist any longer. Or it is not a system that is user friendly. And I am just wondering whether we, be perhaps a little bit

proactive and look at something here that is for Tasmania. What we need, what is the best result or the best process for both employers and employees, for Tasmania's interest.

PN448

Rather than try to fiddle around with what has been referred to as a system of dinosaur proportions, do we, perhaps, be a little proactive and look at something that is maybe outside the square at the moment and look forward rather than playing with the current model. It is just open - throwing it in for debate.

PN449

MR TULLGREN: Your Honour, I accept that there is certainly some strengths in that argument, however, for the reasons that I have advanced, particularly about the question of uncertainty, if you are saying to the players who were there as at 26 March 2006 or 27 March, this is what we want to do - some of those players are gone and others simply do not know what arrangements and for those even make a bit of a stab at it, and think well the best guess is that - you may well find - and I think this is equally true of unions as well as it is of employers, that you have got different groups of your membership who may - that where the question of what sort of wage fixing principles might apply can be different to various groups of members.

PN450

THE PRESIDENT: Sure.

PN451

MR TULLGREN: And it just seems to me that, well, clearly if the Full Bench thought that was the way to go, that would have to be addressed.

PN452

THE PRESIDENT: No, I am not suggesting anything - I am just throwing it in to broaden the debate because I think this may be one of the few opportunities we have got to look at something that is specific to our needs, rather than just picking up something that applies everywhere else. Or having something imposed on us.

PN453

MR TULLGREN: I agree, your Honour, but I come back to the point that if the intention was to try to tidy up - to use that phrase, the public sector awards, then the method by which you get - you carry that out, in effect, we say should be your shortest, the shortest possible path where it will stand illumination. As opposed to a much longer path which could mean that in a - still a year's time there is no absolute settlement of this and the intention of all of the parties, as I apprehend them, won't have been met.

PN454

And the other thing that where we would be concerned about is, we don't believe that this is a process that you can do incrementally, in the sense of saying, well, look we could all agree that we could get to effectively, step three now but that we would reserve looking at four and five for a later stage, because what we are saying - it is a five step process. It is now a three step

and a two step. It is a five step process and dividing them up also subliminally sends the signal that, once you get to point three, well, you can rest somewhat because the other two are not important enough.

PN455

And I think as the figures that Mr Johnson provided on the last occasion, that when you do comparisons with the four stream awards between - even if you updated them to take in all the safety net adjustments, the difference between those rates and the rates that are actually being paid under the last expired agreement, are in many classifications quite high.

PN456

THE PRESIDENT: Yes.

PN457

MR TULLGREN: And therefore, you would still effectively have the distortion and that the awards wouldn't reflect the rates of pay. Now, and what we are saying is that in relation to the proposal - we have put you also don't have to necessarily engage in the process that - of determining whether they are minimum or paid rates. What you say is that they are effectively an award that fits within the principles.

PN458

THE PRESIDENT: It goes back to the good old days where there was just one instrument that covered people's terms of employment.

PN459

MR TULLGREN: That is right, and all the problems that - with respect, and your Honour and I and, I think, Commissioner Abey probably share the dubious distinction of all, in our previous lives, being involved in these interminable debates about what is a paid rates award and why they should exist and how it affected minimum rates awards. And while it might have been all moderately entertaining at the time in certain circumstances, I think the whirligig of time has moved sufficiently far ahead where we should be really saying well, these are awards, they provide the minimum conditions because above that is what in fact, people get paid.

PN460

If that is the case, and people are convinced of that, then a process of doing that and also, as you can say - see in our point, our proposal at step three, by following the process at step - you also get to a position where you can ensure that there won't be arguments in the future about how rates have been set, and so on. So, it has some collateral.

PN461

THE PRESIDENT: So, whether it becomes - it is relevant in the future.

PN462

MR TULLGREN: Yes. Well, that is right, but excepting that they - for the foreseeable future that that is going to be the case, we have addressed it on that basis, so that is why we press the position that we have put and indicate that we would oppose the - an application made by the Minister. But we believe that perhaps in some conference discussion we may be able to move this

matter on to determine exactly - because we seem to be at opposite ends of the - well, in this case, quite literally, opposite ends of the argument. However, whether that remains is a matter that we believe guidance can be provided by the Commission.

PN463

THE PRESIDENT: Okay. Mr Baker, did you want to respond to Mr Tullgren?

PN464

MR BAKER: I am not sure whether any of my colleagues would like to - I will certainly go first.

PN465

THE PRESIDENT: I am sorry, I - did any of the union people want to wade into this?

PN466

MR LYNCH: Yes, I think it would be - probably be useful, Madam President, Commissioner. Despite appearances, I understand everybody on this side of the Bench is in agreement as to our objective here. We would like to see the current rates paid in the public sector, or at least those paid at the end of the last expired agreement, reflected in a safety net award, so it is in a true - relevant safety net award. And we acknowledge that in order for those rates to be in that award, that any conditions changes that have occurred over the period that we have negotiated and not updated the award, should also be part of that award.

PN467

THE PRESIDENT: But if you put the current agreement rates in to an award, the principles don't - can't apply because you can only vary the award by reference to certain principles. Safety net - enterprise bargaining agreements are based on the skill of the negotiators, they have nothing to do with the wage fixing principles, so we have got a difficulty there, if you just translate the current agreement rates into an award, the principles are violated. So, these are the sorts of things that we need to think about.

PN468

MR LYNCH: Yes.

PN469

THE PRESIDENT: I accept that that is what all the parties want to do and we are happy to do that but there needs to be a proper process that is transparent that we go through to do it.

PN470

MR LYNCH: And I guess that is where we vary.

PN471

THE PRESIDENT: Yes. It is the how not the end result, yes.

PN472

MR LYNCH: There are some of us that read the current wage fixing principles in such a way that we don't believe that it can't be achieved under the current principles.

PN473

THE PRESIDENT: Well, wage fixing principles have always had that application. People can make them apply which ever way they want.

PN474

MR LYNCH: Well, the position that we have adopted at our public sector council meeting last Monday was, let us take the simplest approach to this we possibly can take. And our first position - - -

PN475

THE PRESIDENT: I support that.

PN476

MR LYNCH: - - - was to come before you today to consider whether there was flexibility within principle four to achieve what it is that we wanted to achieve. And principle four says that:

PN477

That an award safety net can be reviewed to ensure it maintains its relevance.

PN478

Certainly, the award safety nets, as they exist at the moment, are not relevant and it is a relevance exercise that we want to go through now. The principles go - - -

PN479

THE PRESIDENT: Certainly the first step in that is applying the safety net adjustments to the rates in public sector awards is not a problem.

PN480

MR LYNCH: Yes, we are concerned that once we do that we are unable to do the second step and that is where we differ from - - -

PN481

THE PRESIDENT: Well, that is what we are looking at being able to do, yes.

PN482

MR LYNCH: Yes, that is where we differ from the plan that my colleague has put forward, in that I believe there is an obstacle there once we have done step three, to go and do step five. But I am seeking advice as to whether there is an obstacle to us going directly to step five, without going through the safety net steps. Effectively, all those safety net adjustments have been absorbed into the enterprise agreement rates as we have - - -

PN483

THE PRESIDENT: Hopefully, at the end of this process someone will tell me why they weren't ever varied in the first place. If anybody knows, that is.

PN484

MR LYNCH: I don't think anyone will own up to that. I think - I don't think there is a good reason for it. Yes, so in effect, I am arguing the minimalist approach. Do we have an ability, within the current principles, to achieve what we want to achieve.

PN485

THE PRESIDENT: Yes.

PN486

MR LYNCH: If we don't, then we would - - -

PN487

THE PRESIDENT: How do we do it?

PN488

MR LYNCH: Yes, how do we go about doing that and we are certainly - we would certainly then consider as our second point, an application with the Government to amend the wage fixing principles to allow us to achieve that. But we think it is an outcome we need to work towards and one that we need to work towards rather urgently given the uncertain environment that we are currently in.

PN489

THE PRESIDENT: I am with you on that. Okay, did you want to add anything, Mr Kleyn?

PN490

MR KLEYN: No, I don't I need to say anything. I am in the same camp as Mr Lynch, President and Commissioner. I am not - I am of a similar view that I can't see in, certainly in principle four that we can't proceed down the path that we are seeking to. I, like Mr Tullgren, have serious concerns about if we are going to review all the wage fixing principles and involve everybody else that may or may not have an interest, and how that is going to drag this process out.

PN491

In terms of the document put or the proposal from the LHMU, I don't have a major problem. I really don't see the necessity of putting the safety net adjustments in, given that they have already been absorbed by enterprise bargaining agreements. And I would probably go straight through to, you know, step one through to step four and then step five. So, I don't necessarily see that the - that we need to put the safety net adjustments in. Like, the other parties I would like to - - -

PN492

THE PRESIDENT: Put in two stages, you mean.

PN493

MR KLEYN: Yes, basically two stages. And we need to look at the - all the conditions matters and the wage rates and insert them. I think the awards would continue to be a safety net because by the time this is completed, there

will be another enterprise bargaining agreement in the public sector, so that we
- - -

PN494

THE PRESIDENT: Well, it raises the question, doesn't it, do you need to have an enterprise bargaining agreement or are you just renegotiating the award - - -

PN495

MR KLEYN: Well, whether we just continue to - - -

PN496

THE PRESIDENT: As I said, you are possible too young to remember, that is how it used to be done.

PN497

MR KLEYN: - - - vary the awards. Yes. No, I think - well, I can still remember the 1991 process and that was - I think we completed ours and then
- - -

PN498

THE PRESIDENT: That may be significant.

PN499

MR KLEYN: - - - we completed our process in the Health Department in about 1995-96. So that is how long that exercise took. But as - in terms of your comment earlier about whether we know that the relativities were appropriately established, if my memory serves correctly, I think it was T2399 of '91 - - -

PN500

THE PRESIDENT: My goodness.

PN501

MR KLEYN: - - - that the Full Bench stated that those - the four streams were all - had all been work valued and the relativities were appropriate. So, certainly, from the mouths of the Full Bench- - -

PN502

THE PRESIDENT: That sounds pretty good to me.

PN503

MR KLEYN: - - - that they believed that the relativities were appropriately established, so I think step one has already been done.

PN504

THE PRESIDENT: Good. I am encouraged.

PN505

MR KLEYN: Yes. Well, I know that at the time we weren't necessarily in agreement with the Full Bench at the time, but now it suits my argument - - -

PN506

THE PRESIDENT: You are now.

PN507

MR KLEYN: Yes, well, it suits my argument now.

PN508

MR TULLGREN: You were vehemently opposed.

PN509

MR KLEYN: Yes. So, like Mr Lynch, I prefer a more streamlined processed but - and I am not - I would like to know exactly where it is in the principles that prevents us from going down this path and why they are an impediment and why we need to go down that role of having principles for what may yet become simply public sector employees. That is all, thank you.

PN510

THE PRESIDENT: Indeed, that is correct, yes. Thanks, Mr Kleyn. Anything, Mr Pyrke?

PN511

MR PYRKE: Just briefly, your Honour, Mr Abey. Yes, I am attracted to minimalist approaches because it frees yourself up to do other things. So, if we can adjourn as has been proposed and explore what the other parties see as being a way to interpret the principles, that would be my submission that we would like to do so. If the Commission pleases.

PN512

THE PRESIDENT: Thank you. Mr Wishart, do you have anything?

PN513

MR WISHART: Nothing of value to add, thanks very much.

PN514

THE PRESIDENT: Okay. Mr Baker?

PN515

MR BAKER: Thank you, President and Commissioner. I think it has been clearly demonstrated - there is actually no fundamental - well, there is no difference between us as to where the parties wish to be at the end of the day.

PN516

THE PRESIDENT: It is how you get there that is the - - -

PN517

MR BAKER: It is how we get there is the issue. As the Bench may recall the Government, in its submission to the last minimum wage application that was before the Commission, argued quite strongly for the retention of the wage fixing principles as they applied in 2006. As they say, a lot of water has flowed under the bridge since then and I take the point that you have made quite succinctly, and that is that are those principles relevant in wage determinations within the Tasmanian environment.

PN518

THE PRESIDENT: Or within the Tasmanian public sector.

PN519

MR BAKER: Or within the Tasmanian public sector, in particularly. The issue that is before us is that we don't know what is going to happen, literally, next week as far as wage determination in this country is concerned. Some of us can gaze through various instruments and make predictions as to what may or may not occur. However, I believe that we should deal with this matter in the context that we find ourselves today and not be concerned about what may happen next week or later this year. I disagree with Mr Tullgren in as much as this process may be continuing this time next year.

PN520

THE PRESIDENT: We can fix that anyway, we can just put some time lines on it.

PN521

MR BAKER: I understand that and I - my view is is that the sooner we do this, the sooner it is out of the way. And that is why I concur with Mr Lynch, that we should make an application to vary the wage fixing principles in so far as they relate to public sector employment. Shouldn't have - I mean, if people want to have a whole review of whether we actually retain them, put them in the bin or whatever else, then I think that is a different issue.

PN522

What we are talking about today is public sector employment and how the wage fixing principles relate to public sector employees. I take the comments that were made in relation to the effectiveness or otherwise of what occurs as far as wage setting in the public sector is concerned. It is interesting to note that the Community and Health Services Award has remained unaltered since 1996 or thereabouts. And what we are seeking to do is to put the safety net adjustment into that award and then to finalise the outcome.

PN523

I also note that clearly the wage rates, that the current wage rates do not reflect what is in that award, either as it stands now or if you add the safety net adjustment. But interestingly, if you look at, for example, the Hospitals (Private Sector) Award it is a mirror of the wage rates or the wage structures that are found within the Community and Health Services Award. It contains a safety net adjustment. It is our submission that the safety net adjustment or the award safety net that is contained in principle four, is something separate to that of a total wage rate.

PN524

And for that purpose, we do not believe that you can simply jump over that by putting in current wage rates. As has been discussed between the Bench and my colleagues here, we are not about debating whether it is pay rates, minimum rates, or whatever else. I, together with them, want to get to a position where we can legitimately - if I can use that expression, be seen to be applying the wage fixing principles as they may be amended.

PN525

The Government cannot be seen and cannot - and nor will it be in a - be party to a process that abrogates our responsibilities under the wage fixing principles as they stand at the present time. We seek from the Bench and, no doubt with

Mr Lynch and his colleagues, make an application to seek to vary the award safety net in so far as it relates to public sector employment. Now, that Full Bench, if and when convened, is open to any party to make representations and that includes, obviously, the private sector.

PN526

Now, what role the private sector has in wage rates that are determined in the public sector these days, in our current wage fixing environment, I am not sure. In fact, I would suggest most strongly they would have no interest in what - now, happens in the public sector. It is not like it was some years ago. Again, I would just reiterate.

PN527

THE PRESIDENT: If there is any concern, I suppose there may be a concern about some sort of flow on but whether that is relevant today or not, is something that can be discussed.

PN528

MR BAKER: Well, that is right and I have noted since the introduction of work choices, there have been very few applications to this Commission to vary state private sector awards, so I am not too sure whether they are dying on the vine or whether there will be any movement into the future. But I concur with Mr Lynch, I think and also with others, that what we seek from the Bench is directions, whether those directions arrive out of today's proceedings or whether the Bench requires some time to think about a position that should put back to the parties, then we would be content with that. As I have indicated earlier, as was noted I did have a timetable of bringing this to a conclusion by December. If we can do that before that then let us do it. I set that as my end point.

PN529

THE PRESIDENT: That is December 2007, I presume.

PN530

MR BAKER: Yes. I - you know, because we see this as an integral part of the current negotiations that are between the unions and the Government in relation to restructuring wage rates and conditions - sorry, wage rates and classification structures generally within the state service. We see that we can't really do one without the other. You know, the issue for classifications and wage rates is an issue between Mr Lynch, his colleagues and ourselves, but as far as the - bringing our awards up to date, then that - you can't have one without the other. We want to fix it. So, I concur. And so - sorry, Commissioner?

PN531

THE COMMISSIONER: The classification structure exercise, as I understand, is a separate exercise, is it not?

PN532

MR BAKER: Yes, Commissioner, it is.

PN533

THE COMMISSIONER: And would it not proceed more smoothly if the awards bore some semblance to reality today?

PN534

MR BAKER: Yes, they would.

PN535

THE COMMISSIONER: Thank you.

PN536

MR BAKER: Yes. And it would also assist us because, as we have jokingly commented between ourselves, depending upon the agency you might actually get an extra dollar here or a dollar less. So, it certainly - it would certainly assist in us having one wage rate that is applicable across the - across all the 14 or 15 agencies - - -

PN537

THE PRESIDENT: Well, as we are told we are supposed to be moving into a simplified system of industrial relations across the board, I would like our to be a little more simplified than that other one.

PN538

MR BAKER: Yes, and I notice that our Act still remains at barely 100 pages versus 1200, so - - -

PN539

THE PRESIDENT: Yes, although ours even has flaws in it, they are infinitesimal compared to that other one. It is a minefield.

PN540

MR BAKER: So, look, I would conclude there. And I will leave it to the Bench.

PN541

THE PRESIDENT: All right. Well, perhaps if we adjourn for about five or 10 minutes and then we will come back and have a short conference with the parties and see whether we can work out a way ahead, okay, thanks.

ADJOURNED INDEFINITELY

[10.55am]