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TRANSCRIPT OF PROCEEDINGS

O/N 9506

TASMANIAN INDUSTRIAL COMMISSION

PRESIDENT P.L. LEARY

DEPUTY PRESIDENT R.J. WATLING

COMMISSIONER T.J. ABEY

T No 10886 of 2003

T No 10887 of 2003

T No 10927 of 2003

T No 10928 of 2003

APPLICATIONS BY THE TASMANIAN TRADES AND LABOUR COUNCIL PURSUANT TO THE PROVISIONS OF SECTION 23(2)(b) OF THE INDUSTRIAL RELATIONS ACT 1984

**Application to vary all awards re - in accordance with the decision of
the Australian Industrial Relations Commission, Working
Hours Case of July 2002, Print PR072002;**

**Application to vary private sector awards re - (i) increase
all award rates and existing allowances relating to work or
conditions in private sector awards of the Tasmanian
Industrial Commission, from a common operative date of
on or after 1 August 2003 in accordance with the decision
of the Australian Industrial Relations Commission of
May 2003, contained in PR002003, Safety Net Review, Wages;
(ii) to increase the minimum wage that is payable to adults
without regard to the work performed to \$448.40 per week; and
(iii) to the extent necessary to effect these changes, amend
the Principles of the Commission;**

Application to vary all awards of the Tasmanian Industrial Commission containing Support Wage System clauses re - increasing the minimum amount payable from \$56.00 to \$60.00 per week;

Application to vary all private sector awards containing provisions for Meal Allowance;

HOBART

2.15 PM, TUESDAY, 1 JULY 2003

HEARING COMMENCED

[2.17pm]

PN1

PRESIDENT LEARY: Thank you. We have four applications. Can we deal with them concurrently? Can I take appearances? It may be the same appearances in each application; thank you.

PN2

MS L. FITZGERALD: I appear for the Tasmanian Trades and Labour Council.

PN3

PRESIDENT LEARY: And you are appearing in all matters, I take it?

PN4

MS FITZGERALD: I am, thank you.

PN5

PRESIDENT LEARY: Thank you.

PN6

MR P. TULLGREN: I appear for the Australian Liquor, Hospitality and Miscellaneous Workers Union, and I appear in relation to all matters.

PN7

MR T. KLEYN: I appear for the Health Services Union of Australia, Tasmania No 1 Branch, and again, I am appearing in respect to all matters.

PN8

MR I. PATERSON: I appear for the Australian Municipal Administrative Clerical Services Union, appearing in all matters.

PN9

MS B. RONEY: I appear on behalf of the Tasmanian Farmers' and Graziers' Employers Association on all matters.

PN10

MR M. WATSON: I appear for the Australian Tasmanian Chamber of Commerce and Industry. I appear in all matters and also appear for the Printing Industry Association of Australia, Tasmanian Region.

PN11

MR T. PEARCE: I appear by way of intervention on behalf of the Minister for Industrial Relations in matters T10887 and T10886, and I also appear for the Minister Administering the State Service Act in matters T10886 and T10927. If it please the Commission.

PN12

PRESIDENT LEARY: Okay, thank you. Mr Watson, do you have any, or are you making any appearance on behalf of the National Meat Association? You have not had any - - -

PN13

MR WATSON: No, President.

PN14

PRESIDENT LEARY: No. The only reason I raise it is, I had a letter from Gary Johnson saying that they had an interest in a couple of matters but that was all it said, but I will keep him informed as to what is happening and he can then decide what he wants to do.

PN15

MR WATSON: Thank you. Ms Fitzgerald?

PN16

MS FITZGERALD: Thank you, very much. Perhaps if I could hand up an exhibit?

PN17

PRESIDENT LEARY: Thank you. I will leave it to you as to how you want to deal with this.

PN18

MS FITZGERALD: Thank you, very much, I appreciate that. President, members of the bench, the application lodged by the Tasmanian Trades and Labour Council seeks to, and this is in T10887, seeks to increase all award rates and existing allowances relating to work or conditions in Private Sector Awards of the Tasmanian Industrial Commission from the first full pay period to commence on, or after 1 August 2003, in accordance with the decision of the Australian Industrial Relations Commission of 6 May 2003 contained in print PR002/003 Safety Net Review Wages. And (2), to increase the minimum wage that is payable to adults without regard to the work performed, to \$448.40 per week and to the extent that it is necessary to effect these changes, to amend the principles of the Commission.

PN19

We submitted last year when making application to vary the safety net adjustment, that it is efficient at this time to also increase the meal allowance to reflect the consumer price index movements in the category of meals out and take-away, for the period March 2002 to March 2003, and also to vary the supported wage system. And, consequently, I have made application to make these variations and deal with these at the same time.

PN20

My submission will address the ACTUs claim and the responses to it; the matters considered by the Full Bench of the Australian Industrial Relations Commission and its decision on the claim; matters concerning the statement of principle; reasons why the Tasmanian Industrial Commission should flow-on this decision; and, finally, I would like to deal with the increase to the meal allowances and the supported wage system and then subsequently go on to the second matter, or the working hours test case.

PN21

PRESIDENT LEARY: Right, thank you.

PN22

MS FITZGERALD: With regard to the ACTU claim, they sought a \$24.60 weekly increase in all award rates with commensurate increase in wage-related allowances, and I am referring to the decision which is at tab 2 of that list of exhibits. All employer organisations and associations represented opposed the ACTUs claim, with most arguing there should not be any increase in safety net rates, and that is at paragraph 3. They argued, amongst other things, that given an uncertain economic outlook, particularly in light of the drought, the state of the world economy and international instability, the ACTUs wage claim would have an adverse impact on employment.

PN23

The Australian Government also opposed the ACTUs claim but argued it did not oppose an increase of up to \$12 per week in the award rates of the low-paid, provided that, amongst other things, it applied to award rates up to and including the equivalent of the tradespersons' rate, that is C10 in the Metal Industry's Award currently at \$525.20 per week, and that is at paragraph 12. All State and Territory Governments supported an increase of \$18 a week in the minimum wage, and all minimum award rates. As in the past a number of community organisations made submissions in support of a safety net adjustment and urged the Commission to have particular regard to the needs of the low-paid.

PN24

The Australian Catholic Commission for Employment Relations supported an increase of the amount claimed by the ACTU to the Federal minimum award wage. In determining the ACTUs claim, the Federal Commission is required to consider economic factors and the needs of the low-paid. Economic factors considered included: indicators of recent past economic activity; sectoral information; the immediate economic outlook; the cost of the ACTUs claim; and economic and/or employment effects of safety net adjustments.

PN25

With regard to past economic activity the Commission concluded that over the past year the Australian economy has continued to grow strongly, notwithstanding a moderation in growth resulting from the effects of the drought on rural production. The non-farm sector has continued to grow at 4 per cent per annum. Historically, high productivity growth has continued. Labour market performance has improved and private sector investment has been exceptionally strong. Nett export performance has been weak, and that is at paragraph 185.

PN26

At 188, in terms of sectoral considerations, the Commission indicated that it is recognised that safety net increases will impact differently on different sectors of the economy and on different enterprises and the likelihood of some adverse effect of award increases on some employers is a relevant consideration to be balanced within the range of considerations relevant to the determination of the claims before us. However, a broad assessment of employment data, including a focus on more heavily award reliant sectors, does not disclose any basis to suggest significant adverse employment effects of past safety net adjustments. Concerning the immediate economic outlook the Commission said, and this is at paragraph 186:

PN27

The immediate economic outlook reflected in official forecasts remains positive ...(reads)... uncertainty as to the impact of the Iraq conflict.

PN28

Whilst we think it inappropriate to assume the worst possible outcome in respect of these uncertainties and risks, we have given weight to those uncertainties, amongst other matters, in determining the ACTUs claim. In terms of the cost of the ACTUs claim at paragraph 115, and I am sorry you have got to flip back and forth but - the Commission noted, as in past decisions, none of the cost estimates provided are perfect but they do provide guidance and the Commission concluded:

PN29

The aggregate cost of the ACTUs claim will be less than that arising from its claim in 2002 because the dollar increase sought is smaller, the dollar increase applies to a higher level of award wages and the proportion of employees reliant on award increases is smaller as a result of the continuing spread of bargaining.

PN30

The gross direct aggregate to labour costs of the ACTUs claim would be in the order of point 4 to point 5 percentage points and the nett impact, having regard to the continuing effect of the 2002 safety net adjustment is in the order of point 1 percentage point and that is at paragraph 187. At 166: the nett impact on aggregate wage rates - wage costs of the ACTUs claim suggests a very limited impact of the ACTUs claim on economic growth and employment. The modelling analysis to the extent that specific orders of magnitude can be relied upon, suggests that the nett additional labour costs arising from the ACTUs claim would not materially detract from employment growth. And at 190: in concluding the bench said:

PN31

In our view the Australian economy can accommodate further reasonable improvements in the safety net of minimum wages of the level we determine in this decision.

PN32

In terms of the economic and employment effects of the safety net adjustments at paragraph 145 the Commission said:

PN33

Based on our review of the economy we are unable to discern any adverse aggregate economic impact from the 2002 safety net increase.

PN34

And at 150:

PN35

Given the complex range of factors acting on employment, it is not possible to draw specific conclusions as to the impact of safety net adjustments on employment ...(reads)... have had significant adverse employment effects.

PN36

As in previous cases, the parties relied on academic papers and other research addressing the effect on employment of minimum wages. The Commission referred particularly to the UK Low-Paid Commission and its conclusion that negative effects do occur but that:

PN37

Those effects are modest and confined to specific groups.

PN38

Taking all of the research into account it has been established that moderate increases in wages of the low-paid, of themselves, will diminish aggregate employment outcomes, although some studies suggest that some negative effects might occur for employees receiving the minimum wage - will not diminish, sorry. The Australian Chamber of Commerce and Industry, the Australian Industry Group and the Retail Motor Industry submitted the results of surveys that asked respondents about employment effects of the 2002 safety net adjustments.

PN39

And the Commission indicated in addressing those surveys that they provide:

PN40

No data as to the magnitude of employment effects and the results in relation to the proportion of firms reporting particular effects should be treated with some caution.

PN41

And they explain why they hold this view, and that was because the response rate was low and there was recognition that the affected members of a survey population are more likely to respond than the unaffected and the indifferent and, therefore, it is not possible to conclude that the results are representative of all employers surveyed. The Commission found the surveys do, however:

PN42

Support a conclusion that there are employment effects of safety net increases with respect to some employers. Such effects operate differentially and adverse employment effects are more evident in relation to those employers directly affected by the safety net.

PN43

And that is at paragraph 175. At paragraph 180, the Commission did comment on the issue of productivity and particularly any inverse relationship between industry award coverage and productivity. And as the Tasmanian Chamber of Commerce and Industry, in submissions in past State Wage cases has raised this issue, I thought the bench would be interested in the Federal Commission's conclusions which were:

PN44

Productivity continues to grow strongly and has also increased during 2001/2002 ...(reads)... diminished the scope for bargaining and any associated productivity improvement.

PN45

And at paragraph 184:

PN46

In conclusion, the strong productivity growth enjoyed over recent years does not suggest to us that safety net increases ...(reads)... safety net adjustment awarded will not constrain productivity growth.

PN47

The Federal Commission, by statute, is required to consider the needs of the low-paid. The objects of Part XI of the Act, section 88A(88)(B2) and the Public Interest subsection (90B). The Commission in this decision, reported that:

PN48

As in previous cases the ACTU relied on statements from employees in a range of occupations ...(reads)... in affording basic necessities.

PN49

At paragraph 197 the Commission said:

PN50

It is apparent from their evidence that the witnesses struggle to make ends meet. The significant proportion ...(reads)... week to week and find it difficult to save.

PN51

The Commission concluded, at paragraph 220:

PN52

In having regard to the needs of the low-paid we reiterate the observations made in the safety net review ...(reads)... and on the desirability of attaining a higher level of employment and we have done so.

PN53

With regard to the decision on the ACTUs claim, the Commission referred to its May 2002 decision where it indicated that:

PN54

In the normal course of reviewing the safety net the Commission should seek to maintain a safety net ...(reads)... fair minimum wages for all award reliant employees.

PN55

And stated that:

PN56

Despite the arguments advanced on this occasion by those proposing that any increase should be limited ...(reads)... the May 2002 decision and the reasons given for it.

PN57

The Commission decided, at paragraph 249:

PN58

In the current circumstances, a tiered increase, which will provide a slightly higher increase for employees at the lower level is appropriate.

PN59

The amounts decided were:

PN60

A \$17 per week increase in award rates up to, including \$731.80 per week, and a \$15 increase in award rates above \$731.80 per week.

PN61

The form of the increase gives appropriate emphasis to the needs of the low-paid whilst moderating the overall economic impact by providing a lower amount at the higher classification levels. Whilst this tiered approach tends to reduce wage dispersion it also tends to distort relativities. Nevertheless, the difference between the two amounts and the point in the salary scales which the second tier cuts in, mean that the effect on relativities compared with the uniform increase will be minimal.

PN62

We turn to the question of operative date: the adjustment provided for in this increase will be available from a date no earlier than 12 months after the increase provided for in the May 2002 decision. As in past wage cases the Commission required implementation of the adjustment to be subject to the following conditions: the increase will be fully absorbable against all above-award payments except where permitted by the statement of principles, the increases will be available from a date no earlier than 12 months after the increase provided for in the May 2002 decision in the award in question.

PN63

The commencement of award variations to give effect to this decision will be no earlier than the date on which the award is varied, with phasing-in of the increases permissible where circumstances justify it. Any application for phasing-in will be subject to principle 10. By consent of all parties, and where the minimum rates adjustment has been completed, award rates may be expressed as hourly rates as well as weekly rates. In the absence of consent a claim that the award rates be so expressed may be determined by arbitration. And, allowances which relate to work or conditions which have not changed, and service increments, are to be varied. The method of adjustment is to be consistent with the Furnishing and Glass Industries Allowances decision. Consequentially, the Federal minimum wage will be increased by \$17 to \$448.40 per week.

PN64

With regard to the principles, none of the parties sought any significant change to the substance of the existing principles, however, some suggested qualification of principle 12, the economic/incapacity principle, and the inclusion of statements of clarification about the intended operation of other principles, particularly principles 8 and 10. At paragraph 261, sorry, 257, the Australian Chamber of Commerce and Industry submitted that:

PN65

The next review, after the 2003 safety net review, should not take place until October 2004 and if any award is varied to ...(reads)... it cannot be varied to incorporate any subsequent increase for a period of 18 months.

PN66

At 261, the Commission submitted that - the Commonwealth submitted, sorry, that:

PN67

If the Commission, contrary to the Commonwealth's submissions, awarded an increase of more than \$12 per week, such an increase should be phased-in over a period of not less than 18 months.

PN68

The Commission's responses to these submissions was that, at 263:

PN69

We are not persuaded that any extension of the period between safety net reviews or the application of safety net increases is necessary.

PN70

And:

PN71

As to the specific issue of extending by six months the gap between the applications ...(reads)... warrant such a step.

PN72

The Australian Industry Group submitted that principle 10 should include a statement that, and this is at paragraph 266:

PN73

Delays caused by the business of the Commission ...(reads)... for retrospective effect of the safety net increase.

PN74

The Commission responded at 274, that:

PN75

In dealing with any application for the retrospective operation of any award ...(reads)... that discretion in the manner described by the Australian Industry Group.

PN76

The National Farmers' Federation and the Western Australian Farmers' Federation Industrial Association submitted the Commission add to principle 12 the following, and this is at paragraph 275:

PN77

2003 Drought Exemption: A business that is located in a Commonwealth declared drought area ...(reads)... opposing party to establish reasons why the application should ... [sic] be granted.

PN78

In response the Commission indicated that it considered that:

PN79

A general exclusion -

PN80

of this -

PN81

at this time is premature. For the present ...(reads)... against a particular enterprise, or particular enterprises.

PN82

As in the past, we argue that there are a number of valid reasons as to why the Tasmanian Commission should flow on the decision of the Federal Commission. With regard to past practice, or practice and precedent, it is appropriate to reiterate that on no one previous occasion since this Commission's introduction of the current regime of wage-fixing principles in 1985 has the Commission declined to flow on the quantum of wage increases awarded by the Federal national wage case, or safety net adjustment decisions. With regard to Tasmanian economic consideration, I think it must be at tab 3, maybe, you have got an extract from the Budget papers.

PN83

PRESIDENT LEARY: Yes, that is right, it is tab 3.

PN84

MS FITZGERALD: Thank you. Good. And I think the first page you have got there is page 33 where it indicates in terms of past economic performance:

PN85

Tasmania's recent economic performance has been characterised by improved rates of economic growth ...(reads)... as a result of higher levels of interstate in-migration.

PN86

At the bottom of page 35 and over to page 36:

PN87

According to ABS estimates, the Tasmanian economy contracted by 1.9 per cent in the two years ...(reads)... was 4.5 per cent higher than in 1998/99.

PN88

Back on page 36:

PN89

Over the past four years -

PN90

and that is 1997/98 to 2002 - 2001/2002:

PN91

the average annual Tasmanian growth rate has been higher ...(reads)... and the purchase of two new Bass Strait ferries in 2001/2002.

PN92

With regard to wages, on page 38:

PN93

The rate of wages growth in Tasmania has not kept pace with that of Australia ...(reads)... 30.9 per cent of all jobs in Tasmania -

PN94

in comparison with 28 per cent nationally and that was:

PN95

up from 25 per cent a decade earlier -

PN96

and, again, in comparison nationally a figure of 23.1 per cent. In terms of employment, on page 40, it is reported that:

PN97

The labour market weakened in early 2001 as a result of the national economy slowing considerably. The arrest of decline ...(reads)... national and international economic slowdown.

PN98

And:

PN99

After declining through much of 2001 and early 2002 trend employment has risen ...(reads)... currently at 202,600 persons -

PN100

and that is at April 2003 -

PN101

In the period since early 1999 ...(reads)... equivalent to 8900 jobs.

PN102

Page 43: Over the past three years, that is 2000/2001 to March 2003:

PN103

Employment grew solidly in property and business services ...(reads)... and health and community services.

PN104

With regard to labour force participation and unemployment, at page 41:

PN105

There has been an underlying upward trend in the national participation rate ...(reads)... rising solidly since late 2002.

PN106

And:

PN107

In March 2003, the trend participation rate reached 58.9 per cent, its highest level since early 2001.

PN108

And at page 42:

PN109

Tasmania's unemployment rate averaged 8.8 per cent in 2001/02, which was 2.1 percentage points ...(reads)... highest rate of all the States and Territories.

PN110

With regard to economic outlook, and this is at the very top of page 57:

PN111

Treasury expects that the Tasmanian economy will experience moderate economic growth in 2002/03 ...(reads)... uncertain geo-political environment over the past year.

PN112

And concerning labour market:

PN113

On current trends, employment is set to rise by around .9 per cent in 2002/03 in annual average terms ...(reads)... job market with the confidence of finding work.

PN114

On page 60:

PN115

Treasury expects employment growth to further strengthen in 2003 ...(reads)... the unemployed take some of the additional jobs.

PN116

In summary, there has not been any apparent adverse impact on employment of the past safety net adjustments and it is not anticipated that the increase being sought here today will have a detrimental impact on the level of employment in Tasmania. Rather, we would assert that the very, very moderate increase in award wages may, indeed, have some beneficial effect on the Tasmanian economy and perhaps facilitate employment growth. This is a view shared by the Tasmanian Government. In its submission to the Federal Commission it stated:

PN117

As Tasmania has a high proportion of low income earners an increase in minimum wages ...(reads)... rate which is considerably below the national average.

PN118

As I have previously indicated, the Commission in the past has accepted it would be wrong in terms of consistency, comity, equity and equal treatment for all Tasmanian workers. To refuse the flow-on - to refuse to flow on the Federal decision in circumstances where, (1) State awards cover approximately 25 per

cent of award workers covered in Tasmania; and (2) where there has been no employer objection to flow on the increases in Federal awards that apply in Tasmania. These arguments are valid today.

PN119

I am advised by a number of unions that Federal awards having application in Tasmania have, indeed, been varied to incorporate the safety net adjustment without opposition from employers, or employer organisations. With regard to the economic incapacity principle: if an employer can clearly demonstrate that an increase in labour costs would cause serious, or extreme economic adversity, and result in job losses at the enterprise level, an application to reduce, postpone, or phase in the increase can be made in accordance with the economic incapacity principle.

PN120

While the Federal Commission has explicit responsibilities in respect of the needs of the low-paid, this Commission in the past has accepted our argument that the needs of the low-paid is a matter the Commission takes into account in considering the public interest. The experience of low-paid workers is, as was acknowledged by the Federal Commission, one of struggling to make ends meet, of going without many of the things which ordinary Australians regard as necessities and suffering significant financial difficulty.

PN121

In this jurisdiction, as in the Federal jurisdiction, award-reliant workers are more likely to be the subject of labour market disadvantage. They are more likely to be in casual, or temporary employment. They are more likely to be in unskilled occupations. They earn less, on average, than other employees and they are more likely to be women part time and junior workers. More than half of all award workers are found in three industry sectors: retail trade, health and community services and accommodation, cafes and restaurants. The lives of low-paid workers in Tasmania will be somewhat improved by increasing award wage rates.

PN122

In conclusion, the application to flow on increases from a common operative date of 1 August 2003 is sought for the following reasons: 12 months have elapsed since awards were last varied for the safety net adjustment. If the Commission decides to flow on the increases it is equitable to ensure that all eligible workers receive the increase not later than 12 months after the last adjustment, and that matters outside their control do not delay the application of the increase.

PN123

And it is administratively effective and efficient both for the Commission and the parties for a common operative date, with orders being issued by the Commission. A memorandum of understanding has been reached between the Tasmanian Trades and Labour Council and the TCCI and it requires some amendment. You have got that - I think it is the last tab? No, it is second-last tab.

PN124

PRESIDENT LEARY: Yes, it is at tab 4.

PN125

MS FITZGERALD: At tab 4. So, firstly:

PN126

1. Wage rates in private sector awards be increased by the safety net adjustment ...(reads)... and \$15 for wages above \$781.80 [sic] -

PN127

after that should go in "per week" -

PN128

including junior, apprentice and trainee rates ...(reads)... extent of any over-award payment -

PN129

and the next amendment "for enterprise bargaining increase" -

PN130

currently being paid by the employer -

PN131

which is consistent with the change that was agreed at this time last year:

PN132

2. Wage rates in private sector awards ...(reads)... August 2000, August 2001 -

PN133

and it says "and", it should say "or" -

PN134

August 2003 stage wage case decision is by consent ...(reads)... full pay period on or after 1 August.

PN135

I urge the Commission to vary State private sector awards as submitted as from 1 August this year. My application also seeks to amend the wage-fixing principles of the Commission to the extent necessary to effect the variations sought and my proposed amendment is at tab 5 of the TTLIC exhibits. I have retained the reference to T10230 of 2002 as the Commission determined a process in respect of awards where the lowest adult weekly wage rate prescribed therein is less than the State minimum wage currently \$431.40.

PN136

And amongst other things, indicated that the Commission was of the view that within a period of no longer than three years all awards of the Tasmanian Industrial Commission will reflect a minimum wage amount being the same as the Federal minimum wage. Presently, there are a number of awards which have an adult rate of pay which is less than the current Federal minimum wage and thus this process still has relevance. And I conclude. Thank you.

PN137

PRESIDENT LEARY: Thank you. Mr Watson?

PN138

MR WATSON: Thank you, President. I just commence with handing up an exhibit, please.

PN139

PRESIDENT LEARY: Thank you. Before you do that I will mark the documents provided by Ms Fitzgerald, as A1.

EXHIBIT #A1 (T10887) DOCUMENTS OF MS FITZGERALD

PN140

PRESIDENT LEARY: Thank you. I will mark yours TCCI.

EXHIBIT #TCCI1 DOCUMENT OF MR WATSON

PN141

MR WATSON: Thank you, President. The document before you - that you have before you as exhibit TCCI1 is a comprehensive analysis of the Tasmanian economy as at March 2003. The difficulty that I have this year is that our economist is away at the moment trying to make the Olympic squad for 2004 and, therefore, I am unable to provide the sort of document that you would - - -

PN142

PRESIDENT LEARY: Is that going to be a boost to the economy?

PN143

MR WATSON: It may be. I can't provide the sort of document that I provided last year in that form, but this was actually completed by him prior to his departure in anticipation of this year's State wage case. If I can just go to the document, President, in relation to the front page there in the introduction and just read into transcript a couple of passages from it:

PN144

*Tasmania's economic background changed dramatically during 2002
...(reads)... but it is definitely making steady progress.*

PN145

Now, there is a number of economic indicators contained within the document and each economic indicator has an explanation as a preamble to the graph. As you will see from the document, Tasmania's economy is performing well in comparison to the national economy. The indicators of total employment, full-time employment and the participation rate which were, in fact, exceptions to that rule last year, have also performed very well.

PN146

Section 36 of the Act requires the Commission to take into account the economy of Tasmania with particular reference to the level of employment. We again do have some concerns that if granted, the application of the \$17 and the \$15 per

week will do little to improve Tasmania's labour market. However, we say that the \$17, and to a lesser extent the \$15 per week, is certainly at the absolute limit of what could be described as an affordable increase and we believe that in some cases there will, in fact, be an excess of an affordable increase for some employers.

PN147

PRESIDENT LEARY: There is no data available, is there, that indicates what the impact of the last increase was on labour?

PN148

MR WATSON: No. No, President, no there isn't, not that I can produce today.

PN149

PRESIDENT LEARY: I think that we are in much the same position as the Federal Commission that that information is always difficult to ascertain and sometimes not that reliable.

PN150

MR WATSON: I understand that. In the cases, President, where the increase is not affordable it is obviously open for employers to come to this Commission in accordance with the economic incapacity principle.

PN151

PRESIDENT LEARY: Yes, indeed.

PN152

MR WATSON: And in those cases those matters will be dealt with on their merits. Despite submissions put to you in relation to the labour market I advise that the Tasmanian Chamber of Commerce and Industry does not oppose the application that you have before you today and our non-opposition is, in fact, reflected in the memorandum of understanding at tab 4 of the TTLIC exhibit, which - - -

PN153

PRESIDENT LEARY: You agree to the amendments made by Ms Fitzgerald?

PN154

MR WATSON: Yes. Yes, that is right, President. Just to clarify in relation to the issue of the exclusions, any over-award arrangement, enterprise bargaining increase, however titled, or formed, or registered, we would say would be included in that category, so, in other words, if an agreement has a specific exclusion in there where such an adjustment can be paid, then obviously that would not be the case, but in all other cases any over-award payment, or enterprise bargaining increase, you can absorb the increase.

PN155

PRESIDENT LEARY: So any increase, or any amount over the award rate, in whatever form - - -

PN156

MR WATSON: That is right, yes.

PN157

PRESIDENT LEARY: - - - is what you are saying?

PN158

MR WATSON: As our understanding of - - -

PN159

PRESIDENT LEARY: Yes.

PN160

MR WATSON: Yes. President, and member of the bench, the decision to oppose the increase hasn't been taken lightly. The decision is based on the overall state of the Tasmanian economy, including the labour market, but at the same time we do not walk away from our concerns that I have expressed in relation to the labour market. Our decision to not oppose the increase, as I have said, has been taken on the basis of the current Tasmanian economy as a whole. Given the level of the increase, and we said the same last year, we would encourage the Commission to continue to encourage enterprise outcomes and also to remain vigilant to sectoral claims. In closing, President and members of the bench, I just again lodge the quote from the document, the exhibit that I have handed up, from page 5, the Tasmanian outlook:

PN161

Tasmanians now have much to look forward to. TCCI believes that Tasmania is experiencing a period of sustained economic buoyancy ...(reads)... on the cusp of a strong economic future if we can reinforce this promising news.

PN162

And I thank our economist, Nick Behrens, for those words, President. Those are our submissions, and on that basis, President and members of the bench, we advise that we don't oppose this year's application.

PN163

PRESIDENT LEARY: Thank you. I have just realised, I didn't ask the other union representatives whether they were supporting Ms Fitzgerald's submissions, or had anything else they wanted to add, I am sorry. Mr Tullgren?

PN164

MR TULLGREN: Your Honour, in relation to the organisation that instructs me, we support the applications. The only comment we would make is one that you have identified: my learned friend, Mr Watson, produces the exhibit TCCI1, which perhaps is Mr Behrens' exhibit really. Despite the summary that he has provided I think that what he is telling has a deficiency in the exhibit, is, that while there are a series of assertions about weak labour markets and potential impacts, that there is no specific survey, or attempt to survey that issue.

PN165

Clearly, as your Honour and the bench would be aware, in the national decision there was some debate over the surveys, particularly the one by the Retail Traders Association of the significance of that. I think that if the TCCI, or any other organisation produces comprehensive survey details and fails to deal with that issue, that the significance of any assertion, and that is what it must be, mere

assertion, that this increase that is sought is at the maximum level of tolerance for employment growth or similar, must be taken, with respect, with a grain of salt because it clearly - they clearly don't support that with evidence. So, subject to that note of caution in relation to those that instruct me concerning that matter, we support the application and believe that the applications will have no adverse effect on the economy of Tasmania, if the Commission please.

PN166

PRESIDENT LEARY: Had I offered you the opportunity to speak when I should have we would have been denied half of your submission. Mr Kleyn?

PN167

MR KLEYN: President, members of the bench, as the union representing significant numbers of award-reliant employees, and in industries where it is exceedingly difficult to achieve wage increases other than through safety net adjustments, obviously, we support the application and urge you to grant it. Thank you.

PN168

PRESIDENT LEARY: Thank you. Mr Paterson?

PN169

MR PATERSON: Similarly, President and members of the bench, our union supports the application and commends it to you.

PN170

PRESIDENT LEARY: Good, thank you. Right.

PN171

MR P. GRIFFIN: Madam Chair?

PN172

PRESIDENT LEARY: Mr Griffin?

PN173

MR GRIFFIN: Firstly - and members of the bench, I seek leave to register an appearance in these proceedings, if I may?

PN174

PRESIDENT LEARY: Yes, I don't think there is any objection to that?

PN175

MR GRIFFIN: Good, thank you. And, subsequently, I appear on behalf of the Shop Distributive Allied Employees Association, Tasmanian Branch and, further still, that I endorse those applications presented by Ms Fitzgerald. Thank you.

PN176

PRESIDENT LEARY: Thanks, Mr Griffin.

PN177

MR WATSON: President, I will just make one comments about Mr Tullgren's submissions, please, given the fact that we are sort of a bit out of cinque.

PN178

PRESIDENT LEARY: Yes.

PN179

MR WATSON: Look, I don't necessarily disagree with what has been said about no survey data that has been put up. Had we come to the Commission today opposing the claim then I certainly would have accepted that we were about to provide to you. It is simply submission from where we see things. It is called an assertion of view, whatever you like, but on the basis that we are not opposing this year's claim, I just leave it at that.

PN180

COMMISSIONER ABEY: Mr Watson, while you are on your feet and in the absence of Mr Behren [sic] who may not be in a position to - Behrens, who may not be a in a position to respond, but I will ask it anyway: if I can take you to page 4 of TCCI1, and at the same time take you to page 56 under tab 3 of A1, where we have two sets of economic forecasts, one by State Treasury and one by the one and only Economic Commentator Access Economic, and if I can focus on population, the Treasury document is - seems to be quite buoyant, suggesting a .25 increase in this financial year and .3 next financial year, and we compare that with access economics which is, on my assessment, catastrophically gloomy on the same economic indicator. Are you in a position to make any observations as to the disparity between the two forecasts or, alternatively, are you prepared to punt on which one is right?

PN181

MR WATSON: I never take a punt while I am on my feet in the Commission, Commissioner, but - - -

PN182

COMMISSIONER ABEY: It is quite significant disparity on a key indicator?

PN183

MR WATSON: It is. Look, I think that if you have a look at the two documents, both the chapter 2, I think it is, from the budget papers of this year which is in TTL1, and our document, there may, in fact, be slight variances with the two documents. In terms of a question with that amount of detail I just simply say that I don't think I am in a position to answer your question, but I can get something to you very quickly and copies to other parties if it is just an explanation. As I understand it, we do use Access Economics data in our publications, but I don't know whether your question may be, in fact, more a question for them rather than for us per se, but I can certainly come back to you on that very quickly.

PN184

COMMISSIONER ABEY: Well, I suspect it is, but it is, you know, of great personal interest to myself because after enduring many years of negative population growth it is most encouraging where there is - appear to have turned the corner.

PN185

MR WATSON: Yes.

PN186

COMMISSIONER ABEY: And I am just at a loss to understand how Access can make that prediction particularly when they say that the national figure is around - continues to be positive; it just doesn't add up. I don't want to put you to any great trouble and I am certainly not going to hold up these proceedings.

PN187

PRESIDENT LEARY: For the purpose of interest, if you have got something
- - -

PN188

COMMISSIONER ABEY: Yes.

PN189

PRESIDENT LEARY: - - - that may clarify that?

PN190

MR WATSON: Yes, thank you.

PN191

PRESIDENT LEARY: All right, thank you. Mrs Roney?

PN192

MRS RONEY: President and members of the bench, we have worked closely with TCCI in the memorandum of understanding with TTLIC and we are also of the opinion that we don't oppose this year's safety net review. The only thing that we would like to make aware to the Commission is, in the rural industry we are struggling to get employment and we just don't want any other increases to scare our people off into trying to encourage people to come and work in the rural workforce, so we are doing everything we possibly can to encourage employment, and pay increases are never real good. We have been trying to do that so - but in this case we don't oppose the \$17 increase at all. Thank you.

PN193

PRESIDENT LEARY: All right. Do I take it you also agree to the amendments in the memorandum of understanding?

PN194

MRS RONEY: Yes, President, thank you.

PN195

PRESIDENT LEARY: Which are more administrative than anything else. Mr Pearce?

PN196

MR PEARCE: Thank you, madam President, members of the bench. The position of the State Government in these proceedings is one of full support to the application made by the Trades and Labour Council. We are again heartened by the level of consensus which has emerged between the Council and the Chamber of Commerce and Industry as to the terms of settlement of the application, which are expressed in the memorandum of understanding contained within the TTLIC exhibit.

PN197

The Government's position of support has been influenced by (1) the position that it adopted in the Federal proceedings; (2) the outcome of those proceedings; (3) local economic considerations; and (4) the position of the peak organisations. In briefly addressing those aspects, firstly, the Government participate in the Federal proceedings joining with all other Labor States and Territories in the presentation of a joint submission. Central to that submission was the advocating of an \$18 per week increase.

PN198

That position was based on the considered view that \$18 represented a sustainable and reasonable outcome based upon both the prevailing and forecast state of the economy allied with the need to establish a balance between economic concerns and the needs of the lowest paid workers. In the written submission on the economy, and against a background of the performance of the State economy covering a diverse range of indicators, the Tasmanian Government summarised its position as follows, and I quote from paragraphs 262 and 263 of the joint Government submission. Paragraph 262, and I quote:

PN199

Economic growth for Tasmania is expected to improve in 2002/3 but is also expected to trail ...(reads)... while inflation is expected to follow the national trend.

PN200

End quote. And from paragraph 263, which is also the quote adopted by TTLC:

PN201

As Tasmania has a high proportion of low income earners ...(reads)... which is considerably below the national average.

PN202

End quote. That represented the position of the Tasmanian Government in January 2003. We submit that in the interim period nothing has occurred to warrant any departure from the forecast expressed in that economic summary. Since that time there has been the delivery of the State Budget for 2003/4. In his budget speech of 22 May, the Treasurer, Dr Crean, stated at the outset that the budget was being delivered in the context of, and I quote:

PN203

Record jobs, record private investment, record building and construction activity, record tourist numbers and because of these records historic levels of demand, Tasmanian goods and services.

PN204

End quote. Summarising at the conclusion of that speech the Treasurer stated, and I again quote:

PN205

The forecast economic growth rate of 3.5 per cent for 2003/4 ...(reads)... that has emerged over the past four years.

PN206

End quote. While the Australian Commission made no explicit observations on the Tasmanian economy per se, the State economy, nonetheless, is an integral part of the national economy. In the Federal proceedings a Full Bench understood a wide ranging review of the economy, including an assessment of the likely effect of their decision on key aspects of the economy in the form of wages growth, productivity, inflation and employment. They had regard to the potential effects of their decision at both the sectoral and enterprise level and also took into account the needs of the low-paid.

PN207

These sectoral enterprise and low-paid considerations were clearly issues that were weighted when determining the quantum and form of increase. Paragraphs 189, 247 and 249 of the Federal decision addressed those particular issues. Their decision to award increases in award rates in the minimum wage was borne of their view expressed at paragraph 190 that, and I quote:

PN208

The Australian economy can afford further reasonable improvements in the safety net of minimum wages of the level we determine in this decision.

PN209

In the application before this Commission we submit that the current and forecast economic circumstances of the State are not in any way so demonstrably different from that prevailing nationally, as to warrant an outcome in any way distinct from the national decision. Notions of equity and fairness will be well served by granting of the application. We rely on the observations and conclusions of the Full Bench of the Australian Commission in their decision to the effect that the quantum and spread of the increase is unlikely to have any detrimental effect upon the key indicators of employment, unemployment and inflation in respect to which paragraphs 150, 190 and 179 are respectively relevant.

PN210

Thus, in the absence of evidence, the safety net wage increases past, or present, have had, or are likely to have a detrimental effect on employment and unemployment. The provisions of section 36 to which the bench must have regard are not offended by the application, in our submission. We submit that the Commission give effect to the terms of the application and in so doing ensure the continuing relevance of principle 4, the award safety net. If it please the Commission.

PN211

PRESIDENT LEARY: Thank you, Mr Pearce. You wanted to not add anything else in respect to that application, Ms Fitzgerald? Do you want to go straight on to the next one?

PN212

MS FITZGERALD: Yes.

PN213

PRESIDENT LEARY: Which one would you like to deal with?

PN214

MS FITZGERALD: I don't mind whether I deal with meal allowance, or the supported wage? Do you have a preference?

PN215

PRESIDENT LEARY: All right, meal allowance is the next one on my pile.

PN216

MS FITZGERALD: All right. As I indicated in my submission on the State wage case, it has been agreed between the parties that it is efficient to also adjust the meal allowance in State private sector awards at this time to facilitate a single order being made which encompasses a number of variations. The application before you is to vary the meal allowances to reflect the consumer price index percentage-weighted average of eight capital cities for the category of meals out, and take-away, with reference to the ABS statistics 6401.0, for the period March 2002 to March 2003, and I attach the relevant extract from the ABS stats to my application, which was the consumer price index.

PN217

PRESIDENT LEARY: I will mark the attachment to the application as, in this matter, A1.

EXHIBIT #A1 APPLICATION (10928)

PN218

MS FITZGERALD: The formula adopted for calculating percentage movements using the March-weighted average for eight capital cities, again, which was attached to my application, is $A \text{ minus } B \text{ times } 100 \text{ over } B - A \text{ minus } B \text{ over } B \text{ times } 100 \text{ over one}$, and I am not sure what yours says, but there is a correction on mine? Yes. It says:

PN219

Where B equals the previous quarter -

PN220

and I have got in brackets, (ie June 2002) - that obviously should be "March 2002" -

PN221

and where A equals the latest quarter -

PN222

which is the current March 2003. So, therefore, referring to the consumer price index, the figures are for March 2002, 136.6 and for March 2003, 141.3. Using that formula you come up with a percentage movement from March 2002 to March 2003, of 3.44 per cent. The current meal allowance is \$11.80. Applying that percentage increase would result in - - -

PN223

PRESIDENT LEARY: Is it 11.80, or 11.90?

PN224

MS FITZGERALD: \$11.90. Did I say 90, or 80?

PN225

PRESIDENT LEARY: 80.

PN226

MS FITZGERALD: I sort of thought I - yes. Therefore, the allowance resulting from the application of 3.44 per cent would be \$12.30.

PN227

PRESIDENT LEARY: Right, and that is to apply to all of the awards named in schedule A?

PN228

MS FITZGERALD: In schedule A, yes.

PN229

PRESIDENT LEARY: Yes.

PN230

MS FITZGERALD: And, again, with another change on that which doesn't change the number, just the name, on that first sheet, and I have indicated, I think, in what you have got in your exhibit book, is that you have got a corrected schedule A which includes the Transport Workers' General Award which has, since this time last year, had a meal allowance inserted in of \$11.90, and on that first sheet it says, about almost halfway down:

PN231

The Building and Construction Industry Award -

PN232

it should say, "Civil Construction and Maintenance Award".

PN233

PRESIDENT LEARY: All right, so that is just a change to name?

PN234

MS FITZGERALD: That is a change to name.

PN235

PRESIDENT LEARY: And to add the Transport Workers Award.

PN236

MS FITZGERALD: And on the third page you have got the Transport Workers General Award.

PN237

PRESIDENT LEARY: All right.

PN238

MS FITZGERALD: Keep going?

PN239

PRESIDENT LEARY: I think so.

PN240

MS FITZGERALD: Supported wage is a little bit more tricky.

PN241

PRESIDENT LEARY: Yes; or the timing perhaps?

PN242

MS FITZGERALD: Yes, it is timing. The difficulty we have got is that this matter is not heard by the Federal Commission until tomorrow and so we are a little premature, but I, as I understand, the application is a consent application.

PN243

PRESIDENT LEARY: Before the Federal Commission.

PN244

MS FITZGERALD: Yes, before the Federal Commission.

PN245

PRESIDENT LEARY: Yes.

PN246

MS FITZGERALD: Yes, which seeks to increase the supported wage system from \$56 per week to \$60 per week. By application, T5885 of 1995 dated 28 November 1995, the Tasmanian Trades and Labour Council sought to vary nominated awards of the Commission to reflect a decision of the Full Bench of the Federal Commission dealing with the implementation of the supported wage system. The supported wage system clause was to be inserted into awards to facilitate the engagement of workers with disabilities in employment, at a rate of pay commensurate with the employee's assessed productive capacity.

PN247

In order to make an adequate assessment of the employee's capacity, a trial period of 12 weeks, which, in some cases could be extended up to four weeks, was available which would attract a minimum payment of then, \$45 per week. The minimum amount payable was directly related to the Commonwealth Government's income test applicable to a single person receiving a disability support pension. The Full Bench of the Tasmanian Commission was satisfied that the proposed scheme had substantial merit and was in the public interest.

PN248

Last year the Tasmanian Trades and Labour Council made application, T10289 of 2002, to increase the minimum amount payable to employees engaged under the system from \$51 to \$56 per week as from the first full pay period on, or after 1 August 2002. And, as I have said, the ACTU has made application to the Full Bench of the Australian Industrial Relations Commission seeking an increase in the supported wage system minimum payment in the State Supported Wage System Test Case Awards and this matter will be heard tomorrow.

PN249

In seeking that adjustment in the minimum payment, the ACTU has taken account of the level of disability support pension income test-free area of earnings which currently stands at \$120 per fortnight, which is equivalent to \$60 per week

and the ACTU will table the relevant Centrelink guide to the Commonwealth Government payments concerning the figure of \$120 per week [sic], which I can provide if that is any assistance to the Commission.

PN250

PRESIDENT LEARY: All right, yes, that would be helpful, thank you.

PN251

MS FITZGERALD: That would be helpful?

PN252

PRESIDENT LEARY: Thank you, I will mark it in application 10927 of 2003; that is another A1.

EXHIBIT #A1 APPLICATION (T10927)

PN253

MS FITZGERALD: So given that the ACTUs application is not heard until tomorrow we are unable to provide the Tasmanian Industrial Commission with a copy of the decision of the Full Bench of the AIRC. I therefore propose that the Full Bench of the Tasmanian Industrial Commission increases the supported wage system from \$56 to \$60 per week, conditional upon this increase being granted by the AIRC. The application has been discussed with the TCCI and we have their support in seeking to update the minimum payment in awards of the Tasmanian Commission and I submit that the application is in the public interest and does not offend the wage-fixing principles of the Commission. Thank you.

PN254

PRESIDENT LEARY: I guess it is inappropriate for us to jump the gun and preempt what the Federal Commission will do but, subject to what the other parties say, it may be that we sit on the application subject to what the Federal Commission do. If it is any different to what is proposed at this stage, which I do understand is by consent anyway, we would have to relist it, but if it is the same and there is no objection from the other parties, and we can do that by some administrative method. Does that suit you?

PN255

MS FITZGERALD: That does; thank you, very much.

PN256

PRESIDENT LEARY: All right.

PN257

MS FITZGERALD: I have just been passed a note by Mr Tullgren which indicates - it has not come from him, it has come from somebody else, who says that:

PN258

The Building and Construction Industry Award, this is correct, and that supersedes the Civil Construction and Maintenance Award.

PN259

PRESIDENT LEARY: Is that correct?

PN260

COMMISSIONER ABEY: Yes, that is correct and I think, for completeness sake we should also add in an award known as the Building Trades Award.

PN261

PRESIDENT LEARY: Has that got the meal allowance provision in it?

PN262

COMMISSIONER ABEY: Well, it has got a meal allowance award, whether there is a wrinkle attached to it, I am not sure. It is a bit of a unique area, but it is easier, from our point of view, to include it in the application and if there is a wrinkle, deal with the wrinkle rather than not have it before us.

PN263

MS FITZGERALD: Yes.

PN264

PRESIDENT LEARY: Yes.

PN265

MS FITZGERALD: Thank you.

PN266

COMMISSIONER ABEY: If I can make that suggestion?

PN267

PRESIDENT LEARY: Yes, all right.

PN268

COMMISSIONER ABEY: This change is between last year and this year.

PN269

PRESIDENT LEARY: All right, so that may require the additional Building Trades Award to the list that is in schedule A.

PN270

MS FITZGERALD: That is right.

PN271

PRESIDENT LEARY: And, hopefully, that will pick up all of the awards that have got a meal allowance provision in them. Okay, thank you, for that.

PN272

MS FITZGERALD: Thank you.

PN273

PRESIDENT LEARY: Could I suggest, perhaps, if you have said all you want to say in respect to those applications, we deal with those and then deal with the last one - - -

PN274

MS FITZGERALD: Yes.

PN275

PRESIDENT LEARY: - - - which is a little more - not complicated - - -

PN276

MS FITZGERALD: I would appreciate that.

PN277

PRESIDENT LEARY: - - - but could be a little more difficult?

PN278

MS FITZGERALD: Thank you.

PN279

PRESIDENT LEARY: All right, thank you.

PN280

DEPUTY PRESIDENT WATLING: Ms Fitzgerald, I take it that you are seeking the operative date for meal allowance in the supported wage if, indeed, it is dealt with by the Federal Commission to be from 1 August as well?

PN281

MS FITZGERALD: Yes, I am, yes.

PN282

DEPUTY PRESIDENT WATLING: Well, first full pay period from that time, of 1 August?

PN283

PRESIDENT LEARY: Yes.

PN284

MS FITZGERALD: Yes, okay.

PN285

PRESIDENT LEARY: All right, thank you. Mr Tullgren, anything to add on those two applications?

PN286

MR TULLGREN: No, your Honour.

PN287

PRESIDENT LEARY: Mr Kleyn?

PN288

MR KLEYN: No, thank you, no.

PN289

PRESIDENT LEARY: Mr Paterson?

PN290

MR PATERSON: No, thank you.

PN291

PRESIDENT LEARY: Mr Griffin?

PN292

MR GRIFFIN: No.

PN293

PRESIDENT LEARY: No? Mr Watson?

PN294

MR WATSON: Thank you, President. Firstly, in relation to that matter about the meal allowance and the confusion with the awards, I apologise to the Commission and to Ms Fitzgerald; that was my fault. So, about that - - -

PN295

PRESIDENT LEARY: Good. We always like to have someone to blame.

PN296

MR WATSON: - - - problem with the award. Anyway, as far as the meal allowances are concerned, we have checked the figures and these are in accordance with the normal calculations and on the basis that the award contains the current meal allowance of \$11.90, then we are happy for those, or not, sorry, not happy - we don't oppose the meal allowance going to \$12.30. As far as the supported wage is concerned I think, again, it makes sense that the Commission deal with these matters at the same time to save time and effort for everyone. Providing the Federal Commission do approve the application tomorrow, and which I can't see why they won't but, providing they do - - -

PN297

PRESIDENT LEARY: One never knows.

PN298

MR WATSON: - - - then we would also not oppose the supported wage going to \$60 per week; if it pleases.

PN299

PRESIDENT LEARY: That is on the basis that it is approved by the Federal Commission in the same terms as this application.

PN300

MR WATSON: Correct. Correct.

PN301

PRESIDENT LEARY: Yes, all right. Mrs Roney, does that affect you at all?

PN302

MRS RONEY: No, that is fine, President, thank you.

PN303

PRESIDENT LEARY: And meal allowance you have got no difficulty with?

PN304

MRS RONEY: That is fine; not opposed.

PN305

PRESIDENT LEARY: Okay. Mr Pearce?

PN306

MR PEARCE: Madam President, appearing in this matter, that is the supported wage matter, on behalf of the Minister administering the State Service Act, who indicates support is extended for the application by the Trades and Labour Council to vary public sector awards that contain supported wage provisions by increasing the amount of \$60 - by increasing the amount to \$60 per week and for the reasons expounded by the applicant. We support an operative date of the first full pay period on, or after 1 August 2003, and note the observations of the bench in relation to matters proceeding before the Full Bench of the Australian Commission tomorrow, and there being consistency between decisions, nothing would then prevent the matter being flowed on. If it please the Commission.

PN307

PRESIDENT LEARY: All right, thank you for that. Okay, the last application is the working hours case. Thank you.

PN308

MS FITZGERALD: Thank you. Again, President, members of the bench, the application lodged by the Tasmanian Trades and Labour Council seeks to vary awards in accordance with the decision of the Australian Industrial Relations Commission, working hours case of July 2002 contained in print PR072002. And I think I would like to clarify what I am seeking and if it is considered necessary, with the leave of the Commission, to amend my application. I am requesting that the Commission adopt the principle of the Australian Industrial Relations Commission's working hours test case, endorse a model clause and, by separate application, vary award.

PN309

PRESIDENT LEARY: Sorry, say that again?

PN310

MS FITZGERALD: That is okay.

PN311

PRESIDENT LEARY: You are seeking the model clause in the Federal decision?

PN312

MS FITZGERALD: That you adopt the principle, adopt the model clause - - -

PN313

PRESIDENT LEARY: Yes?

PN314

MS FITZGERALD: - - - endorse the model clause and then, by separate application, vary award.

PN315

PRESIDENT LEARY: Into each award; yes.

PN316

MS FITZGERALD: Yes. Terrific.

PN317

PRESIDENT LEARY: No objection to that process?

PN318

COMMISSIONER ABEY: No.

PN319

PRESIDENT LEARY: Good.

PN320

MS FITZGERALD: Okay. In my submission I will address the ACTUs claim and the responses to it; the matters considered by the Full Bench of the AIRC, which particularly relate to the ACTU subclause (2) as this is the clause which broadly is the subject of our application today; the Commission's decision on the claim; and the reasons why the Tasmanian Industrial Commission should approve our application.

PN321

The ACTUs claim in their reasonable hours test case was to establish an award benchmark for determining reasonable hours however they may be configured. The ACTUs application sought the insertion of three subclauses in a clause dealing with hours of work, or overtime. And you have this in your exhibit at the second tab and at paragraph 10 of the decision of the Commission. And the proposed clause was (1) reasonable hours of work and it listed:

PN322

An employer must not require an employee to work unreasonable hours of work -

PN323

and then a number of matters that were referred to which included:

PN324

(f) the risk of fatigue; (m) the exposure to occupational health and safety hazards -

PN325

and -

PN326

(o) an employees family responsibilities.

PN327

(2) the reasonable overtime subclause which stated:

PN328

2.1 Subject to this clause and employer may require an employee to work reasonable overtime ...(reads)... personal commitments of the employee.

PN329

And then the third subclause had to do with paid breaks after extreme working hours.

PN330

At paragraph 15, the ACTUs case for a test case standard in outline was:

PN331

The ACTUs case in favour of its claim for a test standard was: there is a problem with working time in Australia; (2) a large number of Australian non-managerial ...(reads)... to be awarded as a test case standard.

PN332

In terms of responses to the ACTUs claim, the claim was opposed predictably by the Commonwealth, employer associations including ACCI, the AIG, AMMA and the National Farmers Federation and employees whose awards were being dealt with such as Australia Post and Qantas. The joint States, the Victorian Ambulance Services, the Australian Catholic Commission for Employment Relations and Job Watch, to varying degrees, supported the ACTUs claim.

PN333

In considering the ACTUs claim that each of the three subclauses were either an allowable matter within section 89A(2) of the Act were incidental to an allowable award matter and necessary for the effective operation of the award within section 89A(6), at paragraph 45, the Commission determined:

PN334

Subclause (2) is in two parts. The first confers a right on an employer to require an employee to work reasonable overtime. The second confers a right on an employee to refuse to work overtime in the circumstances specified. The regulation of overtime appears to us to be related directly to the prescription of ordinary time hours of work and therefore is allowable - and therefore allowable. Provision for an employer to require that an employee work reasonable overtime is a feature of many awards and has its origin in the decision of the Commonwealth Court of Conciliation and Arbitration in the Standard Hours Inquiry of 1947.

PN335

Relevant matters that were considered by the Commission included working hours in Australia and paragraph 60, the Commission stated:

PN336

The evidence satisfies as that working time arrangements and the pattern of hours worked have changed significantly in Australia over recent decades.

PN337

And:

PN338

In summary, there has been a substantial reduction in the proportion of workers who work what have traditionally been regarded as standard hours ...(reads)... (3) extended hours, that is more than 44 hours a week.

PN339

At paragraph 75:

PN340

While we accept the ACTUs contentions that extended hours are worked across a range of occupations ...(reads)... work 45 hours or more per week.

PN341

And at paragraph 100:

PN342

We are satisfied that a significant proportion of employees work overtime hours which are unpaid ...(reads)... at least 17.7 per cent of employees.

PN343

With regard to occupational health and safety effects on long hours, the ACTU submitted that the evidence showed that long hours have occupational health and safety effects on employees, and they drew a number of propositions from this evidence. Proposition one:

PN344

After 48 hours of work per week there is a tension between the amount of time spent at work and the amount of time available for sleep.

PN345

Proposition 2:

PN346

A reduction in sleep causes fatigue at work and this increases the risk of accidents; (3) significant fatigue can be compared to alcohol intoxication.

PN347

Proposition 4:

PN348

Long hours are bad for health.

PN349

Proposition 5:

PN350

Insurance companies recognise the effects of long hours when they set premiums.

PN351

And, lastly, proposition 6:

PN352

The externalities associated with long hours of work cost Australia significantly more than 3 billion dollars annually.

PN353

The Commission said:

PN354

We accept that working extended or long hours of work is likely to give rise to a risk of fatigue ...(reads)... cause fatigue. In particular -

PN355

and this is at paragraph 129:

PN356

The nature of the task being performed; the timing and duration of the work and non-work periods ...(reads)... quality and quantity of that sleep.

PN357

And (2) - sorry, and (3):

PN358

Non-work factors contribute to fatigue, not just the number of working hours and the nature of the of the work being performed ...(reads)... effectiveness of coping strategies.

PN359

At paragraph 130:

PN360

In relation to the ACTUs selection of 48 hours of work per week as the point ...(reads)... research papers that will show significant effects.

PN361

With regard to the other propositions advanced by the ACTU in relation to the occupational health and safety effects associated with extended hours of work the Commission said, at paragraph 132:

PN362

We accept that there is uncontested evidence in support of the proposition that significant fatigue can be compared to alcohol intoxication.

PN363

At 133, regarding the ACTUs:

PN364

...second proposition that long hours of work are bad for your health -

PN365

the Commission said that:

PN366

...the counting the costs report reviews the literature on this issue ...(reads)... and miscarriage and psychological depression.

PN367

The Commission concluded at paragraph 137:

PN368

The balance of the evidence supports a finding that there are adverse health consequences ...(reads)... associated with shift work.

PN369

With regard to the ACTUs proposition that;

PN370

Insurance companies recognise the effect of long hours of work when they set premiums -

PN371

the Commission accepted that:

PN372

there is uncontested evidence in support of this proposition -

PN373

but indicated it doubted;

PN374

its relevance to the determination of the matters before it.

PN375

Regarding the proposition that:

PN376

...the externalities associated with long hours of work cost Australia significantly more than \$3 billion annually -

PN377

the Commission accepted that:

PN378

The cost of externalities associated with long hours of work was likely to be significant ...(reads)... for estimating those costs with any precision.

PN379

With regard to:

PN380

...the effect of long hours on employees, their families and communities ...(reads)... and the Fifty Families Report -

PN381

to demonstrate the effect of working long hours on employees, their families and communities:

PN382

The Family and Community Life Report reviewed existing research dealing with the relationship between working long hours and family life -

PN383

and concluded that:

PN384

Extended hours of work have serious negative effects on the institution of the family, on relationships and upon civil society and community.

PN385

The main findings of the Fifty Families Report included:

PN386

Australia has a long hours culture; long hours of work can be unreasonable hours or work ...(reads)... between family and work.

PN387

And:

PN388

You become aware of being a long hours workers when it is too late.

PN389

The Australian Industry Group in opposing the ACTUs claim relied on research conducted by the ANOP and the Commission found at paragraph 150:

PN390

While there are some similarities between the results of the ANOP study and the Fifty Families Report a number of differences are also apparent.

PN391

And:

PN392

These differences are not surprising given the manner in which the participants ...(reads)... without regard to the nature of their working hours.

PN393

And, further:

PN394

While both studies provide some useful insights into the impact of working hours on family life ...(reads)... and the qualitative nature of the research.

PN395

At paragraph 169, the Commission concluded that:

PN396

The relationship between working hours and family and community life is complex ...(reads)... his or her engagement in community activities.

PN397

There was also some submissions about the effect of long hours on employers and the ACTU submitted with respect to the effect of long hours on employers. They relied on submissions by Dr John Buchanan, on a report called What About the Bosses? What About the Bosses, if you can pick up my intonation?

PN398

THE PRESIDENT: Yes.

PN399

MS FITZGERALD: In this matter, the Commission found that:

PN400

The relationship between extended hours of work and productivity is complex. It can depend on how one measures productivity ...(reads)... the incentive to keep employee numbers down but hours up.

PN401

With regard to its decision, as to the ACTUs subclause (2) which, as I have said, is the clause that is relevant to this application and, therefore, I intend only to refer to the remarks the Commission made in its decision about this subclause:

PN402

This subclause entitled an employer to require an employee to work reasonable overtime at overtime rates ...(reads)... hours in excess of ordinary hours in the circumstances specified.

PN403

The ACTU submitted that the effect of the subclause was that:

PN404

1. Subclause (2) represented no more than the safety net that exists at the moment ...(reads)... is prepared to review the wording of the clause so that it reflects the safety net.

PN405

And that was at paragraph 153. As to whether subclause was workable the ACTU submitted that:

PN406

Most awards contain reasonable overtime provisions ...(reads)... family reasons it is not possible.

PN407

Further, in its written submissions of March 2002 the ACTU said:

PN408

It is not the intention of the ACTU to make this subclause an issue in the case ...(reads)... so that it reflects the safety net.

PN409

In deciding to award a test case provision of a more limited kind than that sought by the ACTU, the Commission said at paragraph 277:

PN410

The evidence satisfies us that there are problems that occur ...(reads)... family and community life.

PN411

And:

PN412

In our view it is appropriate to award a test case standard which will confer a right on an employee ...(reads)... it confers will only operate in relation to overtime.

PN413

And at paragraph 278:

PN414

In our opinion, it is desirable that the test case provision should provide some guidance ...(reads)... 1.2.5 any other relevant matter.

PN415

The Bench further stated that:

PN416

An employee's right to refuse to work overtime in circumstances where the working of such overtime would result in the employee ...(reads)... to say no to working overtime was a positive step.

PN417

At paragraph 280, the Commission said:

PN418

The criteria we have adopted in relation to the exercise of the right to refuse to work overtime ...(reads)... greater certainty for both employers and employees.

PN419

And at 282:

PN420

The provisions we have determined are justified by the evidence before us, are allowable and comply with the Act.

PN421

And:

PN422

The provision that we have decided upon ...(reads)... when the award provides for time off in lieu of overtime.

PN423

And as to why the Tasmanian Commission should adopt the principle and endorse the model clause, section 35(1) gives the Commission the power to deal with the matter of this application. The application does not offend the wage-fixing principles. It does not extend the safety net. It is in the public interest as it addresses both the needs of employees with respect to occupational health and safety matters, personal circumstances, including family responsibilities and any other relevant matter, and the needs of the workplace, or the enterprise, and Federal awards that have application in this jurisdiction have, indeed, been varied to include this clause - to incorporate this clause. I urge the Commission to approve the application and to endorse the model clause that appears at the third tab of the TTLC exhibit. Thank you.

PN424

THE PRESIDENT: I will mark the exhibit A1 again.

EXHIBIT #A1 APPLICATION (T10886)

PN425

THE PRESIDENT: Thank you. Mr Tullgren?

PN426

MR TULLGREN: No, thank you.

PN427

THE PRESIDENT: Mr Kleyn? No comment?

PN428

MR KLEYN: No, thanks.

PN429

THE PRESIDENT: Mr Paterson? Yes?

PN430

MR PATERSON: Very briefly, I think this opens up a wealth of issues and I endorse the submissions and I think particularly some of them will be quite critical to take up an address at the award level. There are so many things opened up by this decision and I think it is a - practically all bases for moving on in this particular aspect of working life.

PN431

THE PRESIDENT: Good, thank you. Mr Griffin?

PN432

MR GRIFFIN: No, thank you.

PN433

THE PRESIDENT: Mr Watson?

PN434

MR WATSON: Thank you, President. In relation to this particular matter I advise you that we, again, as far as our form goes today, don't oppose this application on the basis that it is a national test case decision. I believe that the matter has been fully tested by the Federal Commission and the decision is a fairly extensive decision that Ms Fitzgerald has taken you to in some detail; it certainly deals with a number of aspects that the Commission examined in coming to their conclusion, which is the model clause that you have before you today. So on that basis, on the basis - - -

PN435

THE PRESIDENT: It has certainly flowed through to many Federal awards now in the form sought.

PN436

MR WATSON: It has.

PN437

THE PRESIDENT: Yes.

PN438

MR WATSON: Yes. And my understanding is that it is pretty much a walk-up start to a Federal award after this test case decision.

PN439

THE PRESIDENT: Well, it is really only making explicit what has always been implicit in the awards anyway.

PN440

MR WATSON: Correct.

PN441

THE PRESIDENT: Yes.

PN442

MR WATSON: Yes. But - - -

PN443

THE PRESIDENT: I don't like the term "walk-up start", that is all.

PN444

MR WATSON: Or "run-up start"? But, President and members of the bench, on the basis of the test case nature of the decision we don't oppose the application. If it pleases.

PN445

THE PRESIDENT: All right, and the draft model clause at the last - the last page in the exhibit book, you have no difficulty with that as the form of the order?

PN446

MR WATSON: I believe that is the actual clause, President, yes.

PN447

THE PRESIDENT: It looks familiar. Thank you. Ms Roney?

PN448

MS RONEY: Yes. President, members of the bench, the award that I am interested in basically covers much of those provisions already, so we have no opposition to that going into the award either.

PN449

THE PRESIDENT: In the form sought?

PN450

MS RONEY: In the form as - - -

PN451

THE PRESIDENT: Okay, thank you. Mr Pearce?

PN452

MR PEARCE: Thanks, President. On behalf of the Minister for Industrial Relations it is submitted that the Government lends its in-principle support for the submissions of the Trades and Labour Council, the purpose of which is to persuade this bench to endorse the model clause prescribed in the application. I note the matter is one of consent between the peak organisation. Once again, this is a most welcome outcome.

PN453

The imprimatur of this bench will, as I understand it, serve as a catalyst for subsequent applications to be made on an award by award basis to vary such award so as to incorporate the model clause. The proposal stems from arbitrated Federal Commission Full Bench proceedings. The Tasmanian Government

intervened in those proceedings as part of a joint States approach, pivotal to which was support for the four key principles which underpinned the ACTUs application and the development of a test case standard with respect to reasonable hours.

PN454

Having regard to all of the competing submissions, voluminous documentation and witness evidence, the Bench determined to introduce a test case standard of a more limited kind than that sought by the ACTU. Paragraphs 277 to 287 inclusive of the Federal decision, contain the key elements of their deliberations. The test case standard embodies express right of an employer to require an employer to work reasonable overtime, but it balances that employer right by converting a pre-existing implied right of refusal on the part of an employee to work overtime to an award right of refusal.

PN455

The standard clause then codifies the circumstances which deem the working of overtime to be unreasonable and, in respect of which an employee's - an employee's refusal is legitimately based. In a further balancing measure those circumstances include a consideration of the circumstances, not only of the employee, but also of the employer. Some other observations made by the Full Bench which were covered by Ms Fitzgerald, include the Full Bench at paragraph 278, stated that:

PN456

We did not intend that the provision should, as a general rule, be applied ... (reads)... particularly when the roster has been agreed in advance.

PN457

End quote. It was partly for that reason that the circumstances of notice were created at item 1.2.4 of the standard clause. It was also the intention of the Full Bench that the standard clause only be inserted into awards that specify ordinary time and also provide for overtime. The Full Bench also, at paragraph 281, stated:

PN458

The creation of an explicit right also has the advantage of providing an opportunity for overtime issues to be raised at an early stage.

PN459

And further on:

PN460

The new award right will provide the potential for greater certainty for both employers and employees.

PN461

The Commission Full Bench also identified that the standard clause:

PN462

...not intended to interfere with the regulation of part-time work in connection with parental leave -

PN463

that is at paragraph 284. And that the use of the words "at overtime rates" at subclause 1.1 may need modification having regard to the terms of particular award overtime provisions, citing, for example, provisions relating to time off in lieu of overtime. It is for these reasons the award by award approach is to be commended. Adoption of the proposed clause at large does not, in our submission, offend the public interest. On the contrary, the endorsement of a clause which, in the words of the Federal Full Bench, introduces potential for greater certainty between employer and employees, is something that would benefit the public interest. If it please the Commission.

PN464

THE PRESIDENT: Thank you. Sorry, Mr Pearce?

PN465

MR PEARCE: And while I am on my feet, Madam President, a brief submission on the part of the Minister for the Minister administering the State Service Act as the public employer: it is submitted there is no objection to the endorsement by this bench of the terms of the TTLIC application, reasonable working hours. That said, the Minister would, on the making of applications, reserve the right to consider, on an award by award basis, the prevailing award provisions and the operational circumstances of the particular agency, or agencies likely to be affected by the inclusion of the standard clause into public sector awards. If it please the Commission.

PN466

THE PRESIDENT: All right, thank you. Ms Fitzgerald, any response to anything that has been put?

PN467

MS FITZGERALD: No, thank you.

PN468

THE PRESIDENT: All right, thank you. What we propose to do is, first of all, applaud the parties on the degree of consent in all of these applications. In 10887 of 2003, which is the application for the State wage case, the flow-on of the safety net adjustment, we endorse the memorandum of understanding between the parties. The Commission will vary the awards to give effect to the application with an operative date from the first full pay period on, or after 1 August 2003. Likewise, the agreed position between the parties in respect to meal allowances, which is 10928 of 2003, and once again, the Commission will vary those awards that have the current meal allowance therein, also to give effect and to take effect from the first pay period on, or after 1 August.

PN469

The supported wage application: in the event that the Federal decision is in the same terms of the application before us, we will, by administrative action, vary the awards to give effect to that decision, also an operative date of 1 August 2003. Should, for whatever reason, the Federal Commission make a decision different to what is being sought we, of course, would have to call the matter back on, but that would be, I imagine, some extraordinary reason.

PN470

In respect to T10886 of 2003, which is the application to insert the model clause in respect to reasonable overtime, once again, the Commission will vary the awards to give effect to the agreed position between the parties and an operative date for that will also be 1 August - the first pay period on, or after 1 August; is that - - -

PN471

DEPUTY PRESIDENT WATLING: Award by award.

PN472

THE PRESIDENT: Sorry, that is going to be award by award, isn't it? Yes, all right.

PN473

MS FITZGERALD: Yes, I thought that might have been called.

PN474

THE PRESIDENT: Yes, it must be getting late in the day. In respect to the reasonable overtime, we will endorse the agreed position as to the model clause and the awards will be varied on application and the parties are free to make those applications whenever they so desire. Unless there is anything else we need to deal with? I think we have dealt with all of the four applications? And we, of course, in due course, will issue our reasons for decision. Thank you. These matters are adjourned. Thank you.

ADJOURNED INDEFINITELY

[4.16pm]

INDEX

LIST OF WITNESSES, EXHIBITS AND MFIs

EXHIBIT #A1 (T10887) DOCUMENTS OF MS FITZGERALD.....	PN140
EXHIBIT #TCCI1 DOCUMENT OF MR WATSON	PN141
EXHIBIT #A1 APPLICATION (10928)	PN218
EXHIBIT #A1 APPLICATION (T10927).....	PN253
EXHIBIT #A1 APPLICATION (T10886).....	PN425