TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 4692 of 1993

IN THE MATTER OF an application by the Tasmanian Trades and Labor Council seeking to flow on the outcomes of the Australian Industrial Commission's Review of Wage Fixing Principles (Print K9700) with modifications to suit Tasmanian circumstances

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT
COMMISSIONER GOZZI

Hobart, 22 November 1993

TRANSCRIPT OF PROCEEDINGS

unedited

PRESIDENT: Could we have appearances please.

MR J.A. BACON: Mr President, I appear on behalf of the Tasmanian Trades and Labor Council, and unions generally, together with **MR RICHARD WARWICK**, BACON J.A.

PRESIDENT: Yes, thank you, Mr Bacon.

MR T. PEARCE: If it please the commission, PEARCE T., appearing for the Minister for Employment, Industrial Relations and Training, pursuant to section 27.

PRESIDENT: Yes, thank you, Mr Pearce.

MR T.J. ABEY: Thank you, Mr President. I appear for the TCCI, ABEY T.J.

PRESIDENT: Mr Abey.

MR K.J. RICE: If it please the commission, RICE K.J. I appear on behalf of the Retail Traders Association and the TFGA Industrial Association.

PRESIDENT: Thank you, Mr Rice.

MR J. HARGRAVE: If the commission pleases, I appear on behalf of the Printing and Allied Trades Employers' Federation of Australia, HARGRAVE J.

PRESIDENT: Thank you, Mr Hargrave.

DR G.B. SENATOR: If the commission pleases, I appear on behalf of the Tasmanian Salaried Medical Practitioners' Society, SENATOR G.B.

PRESIDENT: Thank you, Dr Senator.

MS R. HARVEY: If the commission pleases, MS HARVEY R., appearing for the Health Services Union of Australia, Tasmania No. 1 Branch.

PRESIDENT: Ms Harvey.

MR G. COOPER: If the commission pleases, I appear on behalf of the Australian Workers' Union, Tasmania Branch, COOPER G.

PRESIDENT: Yes, Mr Cooper.

MR R. HUNT: If the commission pleases, ROD HUNT, appearing on behalf of the Tasmanian Public Service Association.

PRESIDENT: Thank you, Mr Hunt.

MR R.S. RANDALL: If the commission pleases, RANDALL RICKY STEPHEN. I appear on behalf of the Electrical, Electronic, Plumbing and Allied Workers Union.

PRESIDENT: Thank you, Mr Randall.

MR A.J. GRUBB: If the commission pleases, GRUBB A.J., on behalf of the Australian Municipal, Administrative and Clerical Services Union.

PRESIDENT: Thank you, Mr Grubb.

MS P. MORAN: If the commission pleases, PATRICIA MORAN, appearing for the Australian Education Union, Tasmanian Branch.

PRESIDENT: Thank you, Ms Moran.

MR P. GRIFFIN: If the commission pleases, I appear on behalf of the Shop, Distributive and Allied Employees Association, Tasmanian Branch, GRIFFIN P.

PRESIDENT: Yes, thank you. Well done, Mr Griffin.

MR M. CLIFFORD: If the commission pleases, MARTIN CLIFFORD, appearing on behalf of the Construction, Forestry, Mining and Energy Union.

PRESIDENT: Mr Clifford.

MR P. BEVILACQUA: If the commission pleases, PETER BEVILACQUA, on behalf of the TCEEA.

PRESIDENT: Thank you, Mr Bevilacqua.

MR M.D. FLYNN: If the commission pleases, FLYNN M.D., for the Meat and Allied Trades' Federation of Australia (Tasmanian Division).

PRESIDENT: Mr Flynn.

MR J. LONG: If the commission pleases, JEFF LONG, appearing on behalf of the Federation of Industrial, Manufacturing and Engineering Employees.

PRESIDENT: Thank you, Mr Long.

MR P. NIELSEN: Mr President, if the commission pleases, NIELSEN P., on behalf of the Bakery Employees' and Salesmen's Federation.

PRESIDENT: Very good, Mr Nielsen.

MR C. HUGHES: If the commission pleases, CRAIG HUGHES, appearing on behalf of the Tasmanian Prison Officers' Association.

PRESIDENT: Very good, Mr Hughes. Well, thank you. Mr Bacon, your application.

MR BACON: Mr President, it is nice to come along and discover what my affiliates call themselves these days. I don't suppose it's surprising, with all the changes and the length of some of the names now, that the tongue stumbles over some of them.

Mr President members of the bench, before I address the application that is the subject of this hearing, I think it would be remiss of me and of the union movement, not to place on record some views we have about recent events in Tasmania, which we believe will potentially have a serious effect on the practice of industrial relations in this state.

Members of the commission and, indeed, all those present today, will need no reminding about the history of wage fixing and wage negotiations generally over the last 10 years, not only in Tasmania, but throughout Australia. The union movement would argue that the key feature of this decade has been the unprecedented restraints shown by working men and women in relation to wage claims, the action they have taken to support those claims and, particularly, in more recent years, the practice of trading off various conditions, some of very long standing, in exchange for minimal wage increases.

Working men and women in both public and private sector, in virtually every industry and occupation, have been part of this restraint. All those thousands of people, and the unions who are their representatives, have been prepared to accept the restraint that has been urged on them by others. We have done so because we have been convinced that it is in the best interests of us all.

Nowhere, I think, have these arguments in favour of restraint been louder than in Tasmania. In addition to difficulties in the private sector of achieving and maintaining international competitiveness by various enterprises, Tasmanians have heard at great length and in great detail, of the parlous financial position of the state itself. No employer in this state has demanded greater restraint, or more unpalatable trade-offs, than the largest employer in this state, the state government itself.

Successive leaders of the government have pleaded with the Tasmanian people to accept what have been extremely difficult decisions and, I think, particularly, of the number of people, and I suppose most of all, the Department of Construction workers, who last year were sacked because there was no money,

that a range of extremely difficult decisions which have been put to us, and we've been asked to accept, on the grounds that the state could not afford such a level of service or employment any more. In fact, we've seen over 6,000 jobs lost from the public sector in Tasmania. Many of those people are like the Department of Construction workers, have been forced out against their will. Some, while at least on the surface they may have appeared to volunteer, have certainly said to their unions and to the TTLC that they have felt under enormous pressure to, in fact, volunteer to go. And it has all been justified on the grounds of economic necessity.

On top of that, we've seen round after round of cuts to government services, including in departments like Education and Health, which serve the most basic needs of members of the community. Again, all in the name of economic necessity.

Public sector employees have faced the most rigorous opposition of all from the state government whenever they have pursued wage claims of any description. It certainly won't be any news to any members of the bench or anyone here today, that that has been the case. You have seen, as everyone else who is here have seen, the state government take positions always in opposition to pay claims, always demanding the most detailed and lengthy negotiations without any sign that, in fact, the government may come across and support the claim in any sense.

Public sector employees, in fact, have faced a seemingly endless array of delaying tactics that have ensured that hearings of their claims have been delayed, in some cases, for years. I hasten to add there, Mr President members of the bench, that we put the blame for those delays solely at the feet of the state government, and believe that they, particularly in some public statements by leaders of the government, have showed contempt not only for public sector employees and their unions but, in fact, for the commission itself.

Public sector employees and their leaders have been regularly abused and denigrated from the sanctuary of Parliament House. They've been called greedy and all sorts of other things, and even when those employees have finally succeeded with a claim, they've been faced with the government arguing that it simply does not have the money to pay.

It should be remember also that any successful outcomes of cases have been subject to extremely phasing-in periods and should be noted above all that the vast majority of public sector employees, in fact, have had no increase in recent years, other than national wage increases flowing on to be state wage increases, and even now are only offered by the government a 5 per cent increase over 3 years.

Well it is said that actions speak louder than words. And what are we now to make of all the words we've heard from leaders of this government about the necessity for restraint, the necessity to cut services and, above all, the necessity to cut jobs, all in the name of Tasmania having to live within its means, when we've seen the actions -

MR PEARCE: Mr President?

PRESIDENT: Mr Pearce?

MR PEARCE: As I understand, these proceedings are to deal with an application for flow-on of a review of wage fixation .... the Australian Commission. I just wonder whether or not the statement by Mr Bacon is, in fact, germane to that application.

PRESIDENT: I was wondering when Mr Bacon was going to get to it, Mr Pearce.

MR BACON: I can understand, Mr President, why the state government representative wouldn't like hearing some of this but, in fact, we believe that the events of the last couple of weeks, as I said at the outset, potentially have a very serious effect on industrial relations in this state. And it does seem to us that this hearing, which brings together all the principal parties in industrial relations in front of a full bench of the commission, in fact, is entirely the appropriate place for us to be raising concerns about actions of one of the parties here today, that we believe does place in jeopardy previous very good industrial relations in Tasmania.

I don't think it would be beyond the bounds of probability that if, in fact, there had been - just as one example - strikes all over the place in the last week for a 40 per cent increase, that the government wouldn't have taken opportunity today to stand up and say something about that. It seems to us that this is exactly the same, and while they may not like to hear it, I can assure Mr Pearce, and he can assure the government on my behalf, that we will not stop talking about it and every opportunity that arises we will take to make sure that everyone understands precisely what it is that the government has done.

PRESIDENT: So long as you keep it relevant to the application before the bench, Mr Bacon.

MR BACON: Well, in fact, I think it's very relevant.

Because when we see the action of the government in awarding itself, its members and other members of parliament, without any scrutiny, a 40 plus per cent increase in salary to be paid immediately from 1 January 1994, I mean, what are we to make

of what's been said by the government, and preceding governments, over some years now. For instance, what are we to make of the words of the premier, Ray Groom, on 13 January when he said, and I quote: Given Tasmania's economic circumstances, we cannot afford pay rises of anything like this magnitude, and that is why the government will pursue its incapacity to pay case.

What is the commission to make of the words that were put to it earlier this year by another government advocate, when he said, and I quote: Unless wage increases can be clearly, demonstrably cost neutral, then we are going to resist them with every means at our disposal - quoted: Includes those who might have a $1,000 worth of increase. It also includes those who have $24 million worth of increases - quoted: Would be my advice to government that in respect of every decision which brings forth wage increases, they ought to seriously consider running incapacity to pay claims.

Well in our view, Mr President, there are only two possible explanations for the contradiction between the words of this government and its actions, either they've been playing us all for suckers and there is no need for restraint at all or, clearly, they believe the rules and standards they have set for the whole community do not apply to them.

Perhaps most irritating of all is the fact that in such justification that this government has attempted to give for its actions, it has on occasions used the very arguments it has sought to deny to public sector employees. And whereas it has insisted on public sector employees taking any claim to a tribunal, it has made the most bizarre statements about why a politicians' pay claim could not go to a tribunal.

PRESIDENT: Mr Bacon, I think we're wandering a little off the mark. Could you come back to the -

MR BACON: If you tell me to stop, Mr President, I will. But I can tell you, I intend to keep going. We do believe it's relevant. I don't believe that we could run this application today without commenting on what has happened in the last few weeks. It does have an impact. What are people meant to think when one rule is made for everyone else, but not, apparently, for the government.

PRESIDENT: Yes, but you've made an application to the commission for the flow-on of the federal commission's ruling. We haven't heard yet what the other side might be wanting to put. There may be, indeed, no need for you to traverse all the events of the last couple of weeks in order to pursue your claim.

MR BACON: I can assure you, Mr President, I don't intend to cover all the events of the last couple of weeks, but I think

there are some which are extremely relevant to the practice of industrial relations in the state, extremely relevant to the question of wage fixing in the state, and which are relevant to our application.

PRESIDENT: Well see how far you can go, Mr Bacon.

MR BACON: I mean, it does also go to the question of credibility of one of the parties. I mean, I think really, despite what explanations might be put forward by politicians, really, the contradiction between the government's words and actions show that there is no doubt that the government no longer has the slightest bit of credibility when speaking on industrial matters and, in particularly, not the slightest bit of credibility when urging restraint on public sector employees or, in fact, as they did last year when they tried to justify amendments to the Industrial Relations Act, the absurd proposition, which is now being proved to be the outcome of that legislation, that Tasmania somehow is to -

PRESIDENT: With respect to you, Mr Bacon, that's wandering even further off the track.

MR BACON: Well if I hadn't been interrupted, Mr President, I mightn't have got off on to the legislation, but I think it does need to be pointed out that just in the last few weeks again it's been demonstrated that the legislation which Mr Groom and Beswick introduced last year, has had the effect, in fact, of cutting people's wages in Tasmania. Now if they think that is a prescription for good economic management of Tasmania, it does stand in stark contrast to how they have treated themselves.

I spoke earlier of the restraint shown over the last decade by working men and women in Tasmania. That restraint has been tested in the past, for example, by the explosion of executive salaries during the 1980s, and the conspicuous display of wealth and extravagance by some in the community in the same period. However I think the union movement would not be alone in thinking that the single, greatest threat to that restraint during that period in Tasmania, is the recent behaviour of the Tasmanian Government.

Why, in fact, shouldn't Tasmanian workers now say, as one Legislative Councillor who supports the government's decision, has said, that we have put up with restraint for almost 10 years and that is long enough. Whatever people think of the appalling leadership shown by the state government, one thing is for certain and that is that no discussion about wages anywhere in Tasmania will now go by without a reference to the fact that the state government just took a 40 per cent wage increase for themselves.

We are already seeing evidence of this and, in fact, I have been contacted over the last few days by a number of workers around the state to say that the claim we pursue before you today should, in fact, be a claim for a 40 per cent increase for all workers in the state. And already I've had expressed to me by an employer's representative, that a current industrial dispute has become harder to resolve, again because of the example set by the premier and his government.

There can be no question that the example set by the state government will have an effect on the ability of all those in Tasmania who desire industrial peace, to achieve that in a way which is equitable to all.

Mr President members of the bench, you will no doubt be relieved to hear that we do not intend to amend our application to allow for a 40 per cent increase across all awards. We do not believe in pursuing claims that are impossible to win. However we do believe that this hearing, bringing as it does before a full bench, the principal parties of industrial relations in Tasmania, is the ideal opportunity for us to put our views about a matter which, we believe, will have a serious impact on industrial relations in the state.

We would invite the other parties and, indeed, the commission itself to also put forward their views on recent events. In particular, we wait with baited breath for the submissions of the state government in this matter. And that is all I wanted to say, Mr President, as far as those events go, though I do believe that they will keep coming up and, in fact, will form part of the backdrop to any discussion here or elsewhere about wage fixing in the state.

Moving now, specifically, to the application that we have lodged. And perhaps, first, I should distribute the copies of the amended principles, as our application would - that our application would seek to achieve. And in doing so, Mr President, I'd seek leave to amend the application to include these principles.

PRESIDENT: Yes, I note that your application indicated that you would be providing us with that additional schedule. So this will become now your detailed schedule in terms of the note on the bottom of your application.

MR BACON: Yes, Mr President.

PRESIDENT: Very good. We'll mark it TTLC.1. And your request to amend the application accordingly is granted.

MR BACON: Perhaps, first, Mr President members of the bench, we should take you through these changes which, I'd say at the outset, we have made as few changes as possible to the decision of the National Wage Case.

PRESIDENT: Yes.

MR BACON: But if we could just briefly go through it, I think, then everyone will be quite clear about what is being put.

PRESIDENT: Have the other parties had a copy of your schedule?

MR BACON: They have, at least, the state government and the TCCI, have and, at least, some of the union parties to it have, Mr President. I don't know about farmers and -

PRESIDENT: Mr Hargrave and Mr Rice, have you seen it before?

MR RICE: No, first time, Mr President.

PRESIDENT: You're happy to go through it with us?

MR RICE: Yes.

MR HARGRAVE: Yes.

PRESIDENT: Very good.

MR BACON: In the application, Mr President, and that document that's now been distributed, where words have a line through them, they are to be deleted. And where words appear in bold type, they are to be added. So that in the first paragraph of the application, references to the National Wage Case decisions have been replaced with appropriate references to State Wage Case decisions. And this approach has been taken throughout.

On page 1, on the sixth dot point, the word `respondents' has been replaced with the word `parties'.

On page 2, in the middle of the page, the word `consent' has been replaced by the word `enterprise' and the words `or section 55 agreement' have been added. Now I would also seek to include in that first paragraph, Mr President, after the words `may be made', to include the words `or adjusted'. So it would read, `may be made or adjusted to reflect an enterprise bargaining agreement'.

These changes have been made because the words `consent award' have no currency in this jurisdiction and because the view of the TTLC is that enterprise bargaining should be accommodated by both section 33(1)(b) and section 55 of the Tasmanian act.

In addition, the words `enterprise agreement' have been replaced with the words `enterprise bargaining agreement'. We believe that this is important because it serves to delineate

the wage fixing principles from other - I suppose to be nice to them, to describe them as more nefarious approaches to wage setting. This approach has been taken throughout.

PRESIDENT: Would that then require an alteration to the title of the subtitle of that section, which refers specifically to enterprise awards?

COMMISSIONER GOZZI: I suppose, Mr Bacon, to delineate it precisely, the enterprise bargaining agreement provision should really be enterprise bargaining agreement pursuant to the enterprise bargaining wage fixing principle which, in effect, becomes a section 55 industrial agreement.

MR BACON: That's correct, Mr Commissioner.

As to the title, Mr President, of that principle, I don't know that that is of all that great importance, but certainly it could be called enterprise bargaining awards, except that - I mean, the point is -

PRESIDENT: I was really concerned about the distinction between awards and agreements and whether the title `Enterprise Awards', was misleading and simply referred to awards and not agreements. But it depends what everybody understands it to mean.

MR BACON: Yes.

PRESIDENT: No doubt the other parties will have something to say on them on the way through.

MR BACON: Certainly. On page 3, in the third paragraph, Mr President, the words `and termination change and redundancy' have been deleted, and replaced with the words `A proposed award shall not in any way limit or forego the rights of employers and employees to make application and have determined by the Commission any matter in respect to termination, change and redundancy'.

This change has been made to reflect the approach of this jurisdiction in respect to termination, change and redundancy matters.

In addition, the words `or long service with pay' have been deleted because of Tasmanian legislative arrangements.

In the fourth and fifth paragraphs, references to the federal commission and the federal act, have been replaced with references to the state commission and the state act. This approach has been taken throughout.

On page 5, in the third paragraph, the words `A party seeking a special case must make and justify an application pursuant

to section 107 of the Act', have been deleted. This change has been made because the Tasmanian legislation deals with the establishment of full benches of the commission in a different manner. This approach too has been taken throughout.

In addition, in the middle of the page, in subclause (b), the word `national' has been replaced by the word `state'.

COMMISSIONER GOZZI: Mr Bacon, just before you go, I think to get it on foot with where we currently are with our state wage fixing principles, we probably need to include the February '92 decision because that was the one that put the enterprise bargaining principle - or endorsed the enterprise bargaining principle and became part of the wage fixing principles.

So that was - I just haven't got the T number handy at the moment. There's another binder somewhere, I think. I think it was February '92, yes - February '92, which was T.3584 of 1991.

MR BACON: So this is referring, Mr Commissioner, to the first paragraph.

COMMISSIONER GOZZI: The first paragraph and then again in paragraph - the top paragraph on page 5.

MR BACON: Well we'd seek to amend the application, Mr President, to include those two references to those decisions.

PRESIDENT: Yes, very good.

MR BACON: On page 8, in the third paragraph, the words `and Division 3A of the Act', have been deleted. This reference to section 134 - Certified Agreements, is unnecessary in the Tasmanian context.

In addition, in the middle of the page, references to federal awards have been replaced with references to state awards.

I think that, Mr President, covers the changes that we have made by deleting and adding in bold type words to the principles adopted by the National Wage Case. And in the view of the TTLC, these alterations constitute the bear minimum required in respect to adapting the principles to meet the requirements of the Tasmanian jurisdiction.

Now perhaps at this stage, Mr Commissioner, I should provide a copy of the decision of the Australian Industrial Relations Commission which, I think, all parties would have a copy of from their own sources.

PRESIDENT: Yes, TTLC.2.

MR BACON: Mr President members of the bench, this application seeks the adoption by this commission of the outcomes of the Review of Wage Fixing Principles October 1993, contained in print K9700, which we have now provided copies of. That is, we're seeking the adoption of the decision and the wage fixing principles which flow from it.

The central outcomes of the decision are, firstly, a new arbitrated safety net adjustment principle, which enables the payment of $8.00 per week to low paid workers on an award-by-award basis. Secondly, a new enterprise agreements principle which replaces the existing enterprise bargaining principle. Thirdly, the introduction of the concept of a safety net of awards and, fourthly, the establishment of a capacity for the Australian Commission to arbitrate outstanding matters in an enterprise bargaining arrangement, in circumstances where the parties cannot reach final agreement.

Now I should say that the decision is not entirely consistent with the submissions that the ACTU put in those proceedings which led to the decision in Print K9700, however the outcomes - and that is the decision - are supported by the ACTU and by the TTLC. We believe that the Tasmanian Industrial Commission should act on this occasion in a manner consistent with its previous approach on national wage and wage fixing matters and adopt this decision and the principles attached to it. We submit that there is no reason why the commission should depart from its past approach in this regard.

The decision does, however, go to a range of questions on the operation of the Australian Relations Act of 1988; the operation of that act relative to the operation of the Tasmanian Industrial Relations Act does need to be addressed by us in some detail.

The first of two key issues is how do we give effect to the decision to enable the commission to arbitrate those matters which cannot be agreed in an enterprise bargaining context. Have you got that quote? Where's that gone to? I've got it. It's all right. And in fact, on page 17 of the decision, of the Australian Commission, Mr President, the bottom of page 17, the full bench of that commission said:

> The Commission is aware of enterprise bargaining disputes which have occurred since October 1991 where conciliation has failed to achieve agreement on all or some issues. Too often this has meant that worthwhile efficiency improvements have had to be put aside, with consequential loss of extra income to both employers and employees and longer term reduction in competitiveness. Because of this, the Commission considers that it should be prepared to arbitrate in such disputes. It will arbitrate any outstanding matter in dispute and

> will determine it on the merits of the competing claims. This course is consistent with its responsibilities under the Act and should not only make it possible for more improvements in efficiency and productivity to be achieved but the availability of arbitration as a final resort should of itself, on past experience, enhance the prospects of success in conciliation.

And of course this was a major theme running through the case in Australian Commission; the need to encourage enterprise bargaining on a proper basis in work places. The commission did go at some lengths in the decision to really looking at what or the way enterprise bargaining negotiations were proceeding; how they could be improved and how the benefits which are available from proper enterprise bargaining could be encouraged so that those benefits rather could flow more effectively to both employers and employees.

Now of course, our act is different from the federal act and in respect to this question we would make the following submissions. Firstly, the parties should continue to be able to express their agreement to an enterprise bargain through section 55 of the Industrial Relations Act 1988 where they have full and complete agreement.

Of course, maybe I should say at this stage, Mr President, that while one - in fact the Victorian Government sought to have the national wage case adjourned on the basis that there was the possibility of amendment to the federal act which could affect this and in fact since there has been a bill introduced to the Australian Parliament which does make some changes to the act in this respect.

I must say that from our point of view, we would not have much hope, I don't think - at least on our own - of persuading this government to amend the act in the way that we would think would be suitable as far as promoting enterprise bargaining under the auspices of this commission. So we've had to look, without saying, `Well the obvious solution to all this is to ask the government to make amendments'.

We have instead tried to be realistic and look at what we can do with the act as it presently exists, so in the first place we'd say that parties should continue to use section 55. I understand a number of agreements have already been registered under section 55, but also the commission should also be able to reflect enterprise bargaining agreements by making enterprise awards in accordance with section 33(1)(b) of the Industrial Relations Act.

Where an enterprise award is made in accordance with section 33(1)(b) it should not replace an existing award, rather it should supersede those parts of the existing award to the extent of any inconsistency.

An existing award should be maintained in full and unchanged from the date it was last varied. This approach should apply in all cases.

Where an enterprise bargain is reflected in an enterprise award, the enterprise award should only address those matters agreed or arbitrated as part of the enterprise bargaining process.

All matters not addressed in the enterprise bargaining process should continue to be reflected in the existing award, what we would see as being the safety net award. We believe that this approach will ensure that the concept of a safety net of awards will apply.

Enterprise awards made to reflect enterprise bargaining arrangements should contain an expiry date in accordance with the Enterprise Awards Principle, which we have somewhere - words set out, Mr President, in the principles adopted by the Australian Commission. Enterprise Awards, subclause (e):

> (e) where the proposed award is not to operate in conjunction with another award, then the award should specify the classification in the relevant minimum rates award on which the actual rate prescribed for the key classification in the new award is calculated. It should also contain a procedure for renegotiation of the award at the expiry of its term;

The scope of an enterprise award made to reflect an enterprise bargaining arrangement should specify the enterprise or enterprises the award applies to, and the industrial matters contained in the enterprise award, and we do deliberately there, Mr President, allow for an enterprise or enterprises to be covered an award of this sort because we believe there are examples where, for instance, it may be possible for a union and employees to enter into an agreement with a number doctors' surgeries, for example, which - while they may operate as separate enterprises - may also have far more in common than they have differences and it may be the most suitable way for the employees and the union to reach an enterprise bargaining agreement in those circumstances. In fact, to cover a number of what - on one description - could be called separate enterprises, though with all the different arrangements these days, quite often too they are in fact a single enterprise carried on at different places, but we do think that it is necessary to cover those possibilities by referring to enterprises.

In these circumstances, the safety net award and the enterprise award should contain cross references, one to another, for the benefit of the award user. The second -

MR ABEY: I'm sorry. If I may, Mr President.

PRESIDENT: Mr Abey?

MR ABEY: I'm a little lost. Mr Bacon's referring to the possibility of an enterprise award covering multiple enterprises. I'm unable - in the principles that he has put forward - to identify where he gains support for that and I just, for the sake of clarity, are you relying on something in your principles, or is it just a view that you've put.

MR BACON: No, we're not, are we?

MR WARWICK: .... parties are bound by a award - to reflect - an enterprise award .... reflect an agreement between parties bound by an award.

COMMISSIONER GOZZI: I took it to be the Enterprise Awards Principle, Mr Abey.

MR BACON: Yes. In the principle that we have put forward today, enterprise awards, Mr President, it does refer, in the opening paragraph to: An enterprise award or section 55 agreement may be made to reflect an enterprise bargaining agreement between parties bound an award, and we think it may be possible in those circumstances for more than one - once again, because some of these arrangements are a little difficult to strictly define, it may be separate employers, but it may also be separate companies run by the same employer -

MR ABEY: Okay.

MR BACON: - and particularly in the example I gave. I think of doctors' surgeries, so no doubt if put more thought into it we could come up with just a relevant examples in other industries. It would seem to us that that eventuality does need to be covered by this situation. It may in fact be in the interest of the employers to have a enterprise award which covers more than one enterprise, if you were to only take the most narrow definition of what an enterprise in fact is made up of.

PRESIDENT: Mr Bacon, you don't see the words of section 33(1)(b) as being a constraint on that interpretation, where it refers - it gives the commission the power to make an award in respect of all or any employees employed in an enterprise?

MR BACON: Well, again, Mr President, I think we are dealing with situations that are not always possible to strictly define in advance. I mean, I think we'd all be aware of many different arrangements that exist now with the employment contracts, if you like, for instance it is not unusual for employees in a particular work place to be paid by a company which is quite different from the company which trades with the public and I think if we were to take 33(1)(b) on its strictest definition, then of course that would raise the question of what, on each occasion, does constitute an enterprise?

PRESIDENT: Yes.

MR BACON: I mean, we have had Mr Commissioner Gozzi, in relation to Pasminco at the Zinc Works, whether in fact that is a single enterprise or a number of different enterprises and I don't know if that's an example of it, but certainly in some industries, there are many examples of people believing they work for another company, but in fact being paid by another corporate entity. i think it does make the question of what precisely is the enterprise, something that does need to be looked at on `as they come up' basis and then not to use the act to make things more difficult.

PRESIDENT: Yes, I understand what you are driving at, Mr Bacon. I just don't want us to run into a brick wall at the end of the day on it.

COMMISSIONER GOZZI: I suppose, Mr Bacon, it would either be that approach that you are advocating, or if it did run into some difficulties, just individual enterprise award.

MR BACON: Certainly. Of course, the enterprise - 33(1)(b) - just going back to what the president was asking about - the definition of enterprise in the act, Mr President, includes - under (b) - any combination of businesses, undertakings or projects or parts of businesses undertakings or projects and -

PRESIDENT: Yes.

MR BACON: - I mean, that would -

PRESIDENT: That's fairly broad, isn't it?

MR BACON: It would seem to be broad enough as to mean really enterprise could mean whatever you choose it to mean - and I mean, I think the fact is, Mr President, that when those amendments were made to the act they were done for a particular purpose which was to make an enterprise whatever you chose to call an enterprise and if it applies to one section of the act, it certainly can apply equally - that definition - to other parts.

PRESIDENT: Yes.

MR BACON: I'm sorry, Mr commissioner, I've forgotten your question now.

COMMISSIONER GOZZI: No, I'm just simply saying if was found to be an impediment which clearly the definition doesn't provide, then you could simply just do separate enterprise awards which -

MR BACON: Certainly, and the reason for including enterprises was to indicate that in some circumstances that that may be more appropriate.

The second key question, Mr President members of the bench, is what does constitute the safety net of awards and in relation to this matter I'd draw your attention to page 21 of the Australian Commission's decision, in the second and third last paragraphs on that page, where it says:

> The implementation of the national framework of properly fixed minimum award rates (base rate and supplementary payment) in accordance with the August 1989 National Wage Case decision effectively created a safety network of minimum award rates for employees across all industries. This was then, and is now in our view, an essential element in moving towards a decentralised system.
>
> It follows that the safety network of minimum award rates will require periodic review on the basis of a range of economic (including productivity), social and industrial factors if they are to remain viable and equitable.

The submissions of the TTLC on this key question are, firstly, that we do not support an award by award approach in determining the question of what constitutes the safety net of awards. Now, I hasten to point out here I'm not saying that we don't support an award by award approach to actual implementation of this decision, but clearly in relation to the question of the safety net of awards, it needs to be very clear and unambiguous of precisely what the commission is saying about it.

So we say that really what we're seeking from this bench is a clear statement of what does constitute the safety net of awards in this state, and we would put, in relation to that that in fact all existing awards of this commission at the date of your decision, should constitute the safety net of awards.

COMMISSIONER GOZZI: Mr Bacon, just to be clear on that. Are you saying we should establish a minimum wage safety net for all awards because the minimum rates in awards do currently vary, as you will appreciate, and the fluctuate quite dramatically, depending on which award it is that you look at. Are you inviting us to determine a minimum safety net award rate?

MR BACON: Mr Commissioner, I don't think we would seek to look at every specific award and the different stages they are at with various processes and where - and different types of awards for that matter - and seek to be entirely prescriptive today about it. I think the fact is that individual awards - if our application is successful, applications would have to be made in individual awards for - apart from anything else - for the $8.00 per week adjustment. And we would think, in that case, as in fact the federal commission refers in its decision, to looking at some of these questions in those awards at that stage.

Now, that doesn't mean that it's not a question that has to be considered now, but certainly as to what steps need to be taken in various awards and that really would be a matter for the parties to that award and the member of the commission who is looking at it to determine that, but -

COMMISSIONER GOZZI: But I just want to get it clear in my mind. Certainly, - I think what - how I understand what you are saying is that when each award - if your application is successful - was considered, then would it be in respect - in your submission - of the $8.00 increase or would it be looking the $8.00 increase as well as what the appropriate minimum rate ought to be in the award? I think the decision - national wage decision, only goes to actually providing an $8.00 increase on existing minimum rates. I think you're saying something more than that; I'm not sure.

MR BACON: Well, of course - I mean, there is a - a key point to this, Mr Commissioner, is that the national bench has said that as far as the safety net of awards go that there will be future wage increases into the future so that it is necessary now to clearly establish what it is we're talking about in relation to each award, but I don't think that it's consistent with the decision of the Australian Commission that it is only rates which have clearly specified minimum rates in them now that are able to be the subject of an application for the $8.00. For instance, on page 24 of the decision, in the second last paragraph on page 24, it specifically says that:

> Our decision is reached on the basis that, in general, awards have been restructured consistent with requirements of the August 1989 and subsequent Nation Wage Case decisions, although those processes may not yet be completed. However, it is

> not intended that a minimum rates award that has not yet been restructured should be precluded from any safety net adjustment. In any such instances, a supplementary payment of the amount we will subsequently determine may be granted. Moreover where the minimum rates adjustment is not complete the safety net adjustment may be taken into account in determining the size and phasing in of minimum rates adjustments.

I mean it does go on further in different examples, Mr Commissioner, but I think that is really saying that when an application for $8.00 comes along, then while people should be precluded from making that application and indeed having a successful application, that there are other matters that need to be addressed in order to relate the minimum rates in that award to, particularly the metal trades building trades rates

COMMISSIONER GOZZI: Yes. Look, I'm clear on what you're saying. Thanks, Mr Bacon.

MR BACON: Now I was saying that all existing awards of this commission at the date of decision should constitute the safety net of awards and as stated previously, enterprise bargaining should be reflected in either section 55 agreements or section 33(1)(b) enterprise awards.

In respect to award-free areas, the commission should continue to make either section 33(1)(a) industry awards or section 33(1)(b) enterprise awards.

Where a new section 33(1)(b) enterprise award is made in respect to award-free work, it should then become a safety net award. A new industry award should also become a safety net award when it is first made. Once made a new enterprise award or industry award should be able to be superseded to the extent of any inconsistency by a further enterprise award made to reflect an enterprise bargain.

COMMISSIONER GOZZI: So you foreshadow award-free areas having enterprise awards made in the first instance, picking up the $8.00, and maybe subsequently treated by the enterprise bargaining provisions to provide something subsequent.

MR BACON: Could you just run through that again?

COMMISSIONER GOZZI: Well, you're foreshadowing, I think, in the first instance that an enterprise award could be made to cover award-free areas and that process would include the $8.00, but there would be a subsequent step - or could be a subsequent step to treat that award by virtue of the enterprise bargaining provisions -

MR BACON: Yes.

COMMISSIONER GOZZI: - and to that extent the award would be superseded.

MR BACON: Precisely.

COMMISSIONER GOZZI: Yes. All right. Thank you.

DEPUTY PRESIDENT ROBINSON: I've got a query, Mr Bacon, as to what you were saying, which awards should be affected by your application. Is it only minimum rates awards or are there any other type of awards, in your view, which would be outside of today's application?

MR BACON: No, we're talking about all awards, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: All awards, public and private.

MR BACON: Yes, all awards. Now, clearly, the ability of unions party to some awards to achieve an $8.00 increase will not be very great, particularly, if they have an enterprise bargaining agreement on top of their existing award, but as far as the safety net of awards go, we do think that all awards do need to be included - for instance - well, as some explanation, referring to paid rates awards, on that same page of the Australian Commission's decision, page 24, in the paragraph at the top of the page, starting from the fourth line, it says:

> This means for example that where, in accordance with the paid rates award principle, a paid rates award specifies the classification prescribed in the relevant minimum rates award on which the actual rate for the key classification in the paid rates award is based, the rate for that minimum rates award classification will be adjusted. However, whether that adjustment involved an increase in actual pay for employees covered by various classifications in that paid rates award would depend upon the effect of the absorption required by this decision. To the extent that existing paid rates awards do not contain a reference to the relevant minimum rates award classification/s then this should be addressed to the ensure that the benefit, if any, of the safety net adjustment is not lost.

Now that does - or rather it doesn't preclude paid rates awards, for instance, being included in this, though it does - I think if you actually looked at the specific numbers involved, it would be a very rare paid rates award that could actually see an actual increase in pay as opposed to an increase in a minimum rate in the award.

DEPUTY PRESIDENT ROBINSON: Thank you.

MR BACON: Mr President, if there are no further questions, we would finish there except to say that of course we - our application does seek an operative date of any decision by this commission to be the same as the operative date decided on by the Australian Commission, that is, to be available from the 1st of December 1993. We do acknowledge that that is 1-week away which may put some pressure on members of the bench, however, at least now that I've had my say on the other matters then we don't anticipate that this hearing will go very much longer today, but certainly that operative date - I think if it could be achieved - would at least put state award employees in this state on the same basis of federal award employees and we would seek that of you.

If there are no further questions, I would leave it there. If the commission pleases.

PRESIDENT: I hesitate to ask this question, Mr Bacon, because it's - it will be the sixty four million dollar question - do you have a view or have a method by which you would define a paid rates award in this state jurisdiction?

MR BACON: I'd just as rather you hadn't asked me that, Mr President, really. I don't - I mean, obviously there are difficulties and the way that paid rates awards have been viewed or awards that have been viewed as paid rates awards in fact and whether they are in fact paid rates awards or not is of course a very interesting question and one which has - which is a serious question, but I don't know if it is actually necessary to deal with it today or in relation specifically to the application. I think with the explanation I tried to give to Deputy President Robinson's question, I think indicates that the question you ask does need to be looked at, but - I mean, there are answers to proceeding through this application and subsequent decision, if it is in our favour without having to jump enormous hurdles in relation to what is or isn't a paid rates award.

PRESIDENT: Yes, except that the commission - this bench has somehow got to prescribe the means by which the processes will be applied and we need to be clear as to just what are paid rates and what are minimum rates if we had to go down that track and to that extent perhaps we'll hear from some of the other parties.

MR BACON: Well, I mean, there are - particularly some of the public sector unions here may well want to make comment about that, but as I said previously, we are seeking this decision to be applied on an award by award basis and we would think that a number of these questions would be discussed as far

more length when parties actually make application to have awards varied.

PRESIDENT: Yes. Very good.

MR BACON: If the commission pleases.

PRESIDENT: Yes. Thanks, Mr Bacon. Before there are any further submissions, are there any other appearances in this matter?

MISS D. BYRNES: May it please the commission. I apologise for my late arrival this morning, DANIELLE BYRNES from the Australian Mines and Metals Association.

PRESIDENT: Very good. Thank you. Ms Harvey?

MS HARVEY: Yes, Mr President. I wish to make a number of submissions which will be fairly brief. Overall the Health Services Union of Australia supports the submissions made by Mr Bacon on behalf of the Trades and Labor Council. However, I did just wish to make a couple of clarifying comments in how this - the state wage case - how it would actually be implemented and affect awards of which my organisation is a respondent. In particular, just going to the issue of the safety net and in particular I refer to Exhibit TTLC.2, Print K9700. It deals with, on page 23, and I quote:

> Simply put, priorities must be -

PRESIDENT: Could you bear with us for a second? Yes. Thank you.

MS HARVEY: And I quote, in terms of the priorities from the national wage case full bench, and I quote:

> Simply put, priorities must be determined and we make clear that our immediate priority is lower paid employees.

I'm a little concerned about this whole debate about the paid rates versus minimum rates award because there seems to be an implication that people covered by paid rates awards are in fact not lower paid employees and certainly in relation to some of the awards that we're respondent, there are employees who are in fact on low wages, covered by paid rates awards, and in particular it leaps to mind our Private Hospitals Award, Nursing Homes Award, where there are classifications contained below the trade rate which I would certainly consider to be lower paid workers.

I'm not sure how this issue is actually resolved and I think it goes to the question that you raised, Mr President, about how we define a paid rates award. The submission that I would

put is that we really do need to leave the door open to some extent, which has already been put by Mr Bacon, in particular I think the ACTU, in the original application, sought to define the safety net to be any award where in effect an enterprise bargaining increase had not been achieved, and indeed that may well be an appropriate definition in terms of how the safety net increase of $8.00 per week applies.

If that wasn't an acceptable way of doing it it would seem to me that there needs to be some discretionary power in relation to the full bench in terms of how the safety net application - safety net increase - is applied, because certainly my organisation would be arguing that there are many workers we have as members who are in fact low paid workers who should be able to have access to that $8.00 increase.

And perhaps it is an issue that the full bench needs to address, and may in fact be something that requires further submissions.

Secondly, I want to go to the issue of the enterprise bargaining principle itself, and if I can refer to page 18 of the full bench's decision in relation to the third paragraph, and it says, and I quote:

> Enterprise bargaining, in terms of its aims as we have described them, is both a continuation and extension of the structural efficiency principle. When that principle was introduced, the Commission emphasised that it was not intended to apply in a negative cost-cutting manner or to formalise illusory, short term benefits. Rather, it was intended to facilitate the type of fundamental review essential to ensure that existing award structures are relevant to modern competitive requirements of industry and are in the best interests of both employers and employees.

Now above that paragraph it outlines a number of issues which the full bench thought maybe appropriate to do in terms of enterprise bargaining, and they do go to structural issues.

The reason that I seek to address this issue and to reinforce it is that I think it is very important that this full bench make a singular statement and adopt that part of the decision because we are particularly concerned that the objectives of the decision itself could be undermined if employers sought to use the enterprise bargaining principle in a way that undermined that key objective of finding benefits that assist both employers and employees.

And it is of particular concern to my organisation because of the difficulty of defining productivity within the service

industry, and I think that it is going to require much argument in terms of implementation of the decision.

We don't produce widgets, we don't see much point in the hospital industry and the community health services of pushing people through the system quicker and getting them out sicker, and that is a very serious issue that we need to address in terms of how productivity is defined.

So I just raise that issue because I think it is important that it needs to be considered in its broader possible way, and in particular that are mindful of considering issues such as quality of care, skill levels, service-user satisfaction, occupational health and safety, absenteeism, and those sorts of issues rather than negative cost-cutting issues.

Finally I just want to quickly look at some of the issues of processing.

My organisation supports the amendment made to the principles that Mr Bacon submitted, and in particular in relation to the enterprise awards principle on page 2 of TTLC.1 where it says, `a consent enterprise award or a Section 55 agreement may be made or adjusted'.

Now I think that it is important that that extra proviso be included, mainly for the ease of processing under this jurisdiction in terms of creating an enterprise award under section 33(1)(b). It requires a fairly lengthy process in terms of notifying of scope and title and persons and parties bound, and when an enterprise award already does exist it does seem rather silly to go through an additional process of doing that again every time that we seek to adjust an enterprise award.

In addition, I want to make a point about section 55 and the difficulties we have in that it doesn't actually accumulate. The method used in the federal jurisdiction I understand often enterprise bargaining agreements is section 134, and that at the expiry of its date it just turns into a federal award that remains in place.

We don't have that avenue in terms of section 55 because it just lapses after the 3 years, or it is in place but either party can actually retire from the agreement.

I think that does have a problem with our jurisdiction, and I think Mr Bacon addressed -

COMMISSIONER GOZZI: In what way, Ms Harvey? I mean, it does carry on subject to an award.

MS HARVEY: Subject to it being withdrawn from.

COMMISSIONER GOZZI: No, it carries on - if nothing else happens it carries on subject to an award.

MS HARVEY: Yes, that's correct, Mr Commissioner, but either party, as I understand the Act, can notify to retire from the agreement.

COMMISSIONER GOZZI: Yes, but they can do that at any time, though.

MS HARVEY: Mm, and that's a different provision in relation to section 134.

COMMISSIONER GOZZI: Yes. So, what are you saying about that? What should we be doing about that?

MS HARVEY: I don't actually wish to go to - well, you can't do anything about it - it is in the actual Act. But Mr Bacon made comment in relation to an expiry date for an enterprise award and that there was support for the concept of it actually having an expiry date.

That is a position that we would support.

However, I think it needs to be defined, the expiry date, in terms of the no extra claims, rather than saying that an enterprise award would expire at the end of its term. That it would be possible for the enterprise award that has been put in place under this principle to continue, but that there be a clear commitment that there be a no extra claims; and that's how you define the expiry date, rather than saying that the award itself formed under section 33(1)(b) of itself lapses.

COMMISSIONER GOZZI: I didn't think an enterprise award would lapse at all once you made it. It could be superseded and it could apply to the extent that it is different to the award that it comes from, and I thought that what was being put - and it is an interesting point - that we should specify in the enterprise award the minimum award that is being referred to, that the enterprise award would supersede to the extent that it is different, the base award would continue on.

MS HARVEY: Yes, that's correct. All I am talking about is part of the principle that deals with an expiry date in the actual enterprise bargaining agreement.

The submissions put was that under an enterprise bargaining agreement that it could be processed either through section 55 or section 33(1)(b) and that it should contain an expiry date in it.

The point that I was purely trying to make that is in relation to processing under section 33(1)(b) that expiry date should be interpreted and meant to mean that's the date at the end of

the actual agreement, which I assume would include a no extra claims provision for the period of the agreement, but the award in itself doesn't expire at the end of the term of the agreement.

COMMISSIONER GOZZI: I wouldn't see that the enterprise award, per se, would have to have anything about an expiry date because section 55 agreements by law require an expiry date.

MS HARVEY: I think the matter is clarified, as far as I am concerned. I just wanted to make that point in relation to the expiry issue.

COMMISSIONER GOZZI: Right.

MS HARVEY: Yes.

DEPUTY PRESIDENT ROBINSON: I just wonder, if I might, if there is some confusion about applications being made for enterprise awards. I would have thought that they would be made under the existing section 23 or 24, and you don't make applications under section 33 at all. That is just another part of the Act which gives guidance to what sort of awards might be made.

Am I right, or?

MS HARVEY: It's a question I think I'd have to take on notice, deputy commissioner. The point purely I was trying to make was in terms of how these principles would operate in relation to section 33(1)(b) of the Act.

PRESIDENT: For the purposes of enterprise bargaining?

MS HARVEY: Yes.

PRESIDENT: You want enterprise awards to have a limited life in terms of renegotiation?

MS HARVEY: Yes, that's correct, Mr President.

PRESIDENT: You want to be able to renegotiate at the expiry of a -

MS HARVEY: Yes, which is contemplated indeed in the TTLC.1 which Mr Bacon put forward.

PRESIDENT: Yes, which is consistent with the federal decision.

MS HARVEY: That's correct.

PRESIDENT: Yes.

MS HARVEY: Having made those points, Mr President, I just reiterate that the HSUA supports the application made by the TTLC, and seeks the adoption of both the decision and the reasons for decision as well as the principles, as contained in TTLC.1.

If the commission pleases.

PRESIDENT: Yes. Thanks, Ms Harvey. Mr Cooper?

MR COOPER: Mr President, and members of the bench, with respect to our position here today we clearly do support the submissions put by the TTLC in what Mr Bacon has covered.

We clearly support everything, even the earlier submissions that were considered to be a bit wayward.

We totally support everything that has been said.

One thing we do put to the bench is that these principles should be adopted clearly to allow for people who haven't been able to access wage increases through enterprise bargaining, and in respect to a number of awards that we have. For instance, we do have a State Farming Award and we understand there are some seven or eight thousand farmers that are in the State of Tasmania and they are not all covered by that award, and they also are covered by the federal award. But you can imagine the tasks that are before us as a union to get out and negotiate some 8000 enterprise agreements.

It's simply beyond our ability to do that -

MR BACON: Keith has done it for you.

MR COOPER: There are only, as I understand it, two agreements that have been registered pursuant to section 61, and it clearly demonstrates that that is a big task before people, and what it means is people in those industries are somewhat disadvantaged in their ability to collectively - as a lot of places do only employ one person - as they are collectively or with our assistance negotiate agreements that will allow for flow on of increases in respect to their wages.

Now the state award in respect to that matter has been completed in respect of minimum rates, but we have a series of people out there that are disadvantaged if we can't access a principle such as one that has been put by the Labor Council this morning.

Now that is only one award I have quoted to the commission, and the commission would be aware of the vast number of awards that my union is involved in that haven't been able to access a rise because of the principles that were currently in place

and the fact that you can't actually get along and do enterprise bargaining under an arbitrated system.

So we certainly support that part of the decision that allows for the involvement of the commission to assist the parties in developing their agreement to the satisfaction of all parties involved.

We clearly support the submissions that have been put by Ms Harvey as well that this exercise should not be viewed as a negative cost-cutting exercise.

It is clearly an exercise that allows for workers who have operated under restraint for a considerable period of time in Tasmania and who are currently - when we look at national benchmarks that have been made available - are currently lower paid than their Australian counterparts in a lot of respects.

We would simply put to the commission that the submissions of Mr Bacon should be supported; that the principles that have been put should be adopted; and we would reserve our rights to comment, as we would obviously have under the provisions of the Act, to comment on any submissions that may fall from employers in respect to any opposition to the comments that Mr Bacon has made.

If the commission pleases.

PRESIDENT: Yes. Thanks, Mr Cooper. Mr Hunt?

MR HUNT: Mr President, members of the bench, I simply want to do no more than indicate that the Public Service Association supports the application made by the TTLC, and to indicate that we also support the submissions that were made by the representative of the TTLC.

If the commission pleases.

PRESIDENT: Yes. Thanks, Mr Hunt. Ms Moran?

MS MORAN: Mr President, the Australian Education Union supports wholeheartedly the as put by the Trades and Labor Council, and in particular those parts of the application which goes to the safety net and to the ability for unions which are unable to obtain an enterprise agreement by agreement to come to this commission.

A problem has raised itself, as you would be well aware, in recent months of unions which recently had had special case claims granted being unable to access in full, and perhaps at all, the state wages agreement because of their recent special cases.

This means that teachers may in fact not get the first 1.5% of that 5% or may in fact not get any of it.

We urge you to ensure in your decision that that situation doesn't apply to our members. That in fact it will be possible for us to obtain wage increases through this commission.

PRESIDENT: Do you see the principles providing your organisation with that access?

MS MORAN: I am not at all - I am not completely sure that they will, Mr President, and I think that's part of the task of the bench, surely, to protect those people who come to it in good faith for special case increases and gain those increases, and I - you know, after considerable testing - and I endorse Mr Bacon's earlier remarks about one party present in this room, or the principles of one party present in this room, who in fact had to go through no such testing and rigorous and lengthy process in order to get a major wage increase.

PRESIDENT: So you're prepared to have awards that your union is a party to dealt with on a case-by-case basis, and rely on the strength and merit of your argument at that time?

MS MORAN: Yes, and on the wisdom of the bench in framing the principles, Mr President.

PRESIDENT: As always.

Yes. Thanks, Ms Moran. Mr Griffin?

MR GRIFFIN: Thank you, Mr President, and members of the bench. The SDA supports the application by Mr Bacon from the TTLC, and I believe it is only fair that an increase be directed through this commission to those employees who have very little to bargain with, and I refer to the low wage earners in the retail industry where it was noted on transcript in 1989, or thereabouts, that shop assistants were extremely efficient and it would be very difficult for those workers to become more so, at that time.

The Retail Trades Award has been restructured in a way that has granted the flexibility and multiskilling skill-related career paths that employees were seeking at that time.

This restructuring took place in 1990 and has been completed quite some time ago.

At that time award restructuring was also negotiated in tandem with the extension of shop trading hours. However, that question still goes unanswered, and in the meantime most

employers have been difficult to entice into enterprise agreements with the SDA because of that very question.

In this type of environment it is difficult to perceive any future wage increases for shop assistants.

It is the association's view that an increase of $8.00 per week is consistent with the emphasis given to the minimum awards rate safety net concept in an enterprise bargaining environment, and under those principles that have previously been outlined I believe that this amount should be forwarded as from 1 December this year.

Thank you, Mr President, and members of the bench.

PRESIDENT: Yes. Very good. Thank you, Mr Griffin. Yes, Dr Senator.

DR SENATOR: Mr President, our society endorses the comments made by the preceding speakers and particularly the application by Mr Bacon in all regards.

And the society feels that all awards that have not had a wage or salary increase since the last state wage case increase should have their rates increased as of 1st of December by the $8.00 per week.

I'd also like to endorse the comments of Ms Moran regarding the special case areas, and our own principal award is currently undergoing that process. The only difference being in our case that the special case has not been concluded.

And I would also indicate that the society has been excluded from the agreement in relation to state service wages adjustments so that there should be no impediment in that regard.

If the commission pleases.

PRESIDENT: Sorry, would you mind repeating that last sentence for me? I missed it.

DR SENATOR: Well, the society and its membership has been excluded from the agreement in relation to state service wages adjustments, so that there would be no impediment in that regard.

PRESIDENT: Yes. Yes, thank you very much. Mr Abey or Mr Pearce, I am not certain who wants to go first.

MR ABEY: We've negotiated that.

Mr President, and members of the bench, I would indicate from the outset that we do not oppose in principle the flow of the federal decision into this jurisdiction.

Industrial reality would dictate that unless there are compelling circumstances which would suggest an alternative approach then the wage fixing principles of both jurisdictions should be the same.

In our view the circumstances which would justify departure do not exist on this occasion and, hence, we do not, as I say, oppose in principle the flow of the federal decision.

That is, it should not be interpreted as meaning that we support the decision or that it is a good decision. We do neither.

It is a decision which frankly is largely unwelcome within the employer community for a number of reasons.

They include that the increase does not derive from outcomes negotiated at an enterprise level.

There is no link with productivity and efficiency measures.

It will serve to have a negative impact on the economic competitiveness of enterprises, and in our submission will send entirely the wrong messages to both - the wrong message - to both employers, unions and employees who are embarking down the enterprise bargaining path.

There is no doubt that a decision of this nature, which is a quasi across-the-board increase, with suggestions that there will be further across-the-board increases in the future, will substantially set back the progress towards enterprise bargaining, and that is extremely disappointing.

It will also impact disproportionately on the economic position of Tasmania.

I'd like to - we have the predictable hilarity behind us which seems to accompany any submission which goes to economic competitiveness or economic well-being in this commission. It is apparent that the union fraternity simply do not understand what the word means.

MR BACON: Mr President, if I'm going to be interrupted saying what I think about the State Government, then really Mr Abey ought to be a bit more careful before he makes general statements about what the union movement says or does or thinks. It is simply not true what he is saying now.

PRESIDENT: Yes, continue, Mr Abey. And, please, whilst advocates are addressing the bench it would be appreciated if

other parties present could restrain themselves and not interrupt.

MR ABEY: Thank you, Mr President.

On this question about the disproportionate impact in Tasmania I would like, for the information of this hearing, table an exhibit.

PRESIDENT: Mark this TCCI.1.

MR ABEY: Thank you. This is an extract from the industry commission report dealing with impediments to regional industry adjustment in September 1993.

Now there has been a wide-ranging debate over the last couple of years and, indeed, over the last few days about this so-called issue of national parity, and I never apologise for the fact that in our submission the notion of national parity is the last thing that a State such as Tasmania should be pursuing.

The realities of life are that wage rates differ on geographical location, and that includes between the States, and simply for a minor State like Tasmania to seek this notion of national parity, all that does is jack up the rates in Tasmania disproportionately to what should apply if proper market forces were allowed to occur.

COMMISSIONER GOZZI: Mr Abey, just on that point of national parity, and I am rather pleased you raised it. The fact is that around about 50%, about half of the workforce already have national parity through federal awards.

MR ABEY: Sorry, I missed that point.

COMMISSIONER GOZZI: About 50% of the state's workforce already have parity because they are subject to federal awards. I think it is around about 50%.

MR ABEY: Well, I am not disagreeing with the 50%, but -

COMMISSIONER GOZZI: Now let me just say, make the point that I want to make. When we talk about parity granted by this commission in the area such as teachers, the parity in fact only goes to those teachers on the automatic scale.

You'd be aware that the claims from the teachers and other unions supporting those claims sought significant pay increases in the promotable levels, and this commission declined to award those increases.

So when we talk about national parity we want to be careful that we don't say that every classification in the teachers'

award, for instance, or the TAFE Award achieved national parity, because they didn't.

The only people that in fact achieved national parity are those people who after 11 years in the teaching scale now equate with their national colleagues, and that's all. There is no uniform national parity in any of those awards.

The same with TAFE teachers, and of course I go to the point that parity in respect of all classifications was supported by the government in respect of the nurses.

So this commission in its life since 1985 has granted part parity to a certain section, a classification section, within awards applicable in this commission. And that goes to the teachers in the automatic range and TAFE teachers in the automatic range.

Police, for instance, couldn't get it by a decision of the president, and of course the decision in respect to firefighters has still to come down. That's what the deputy president is considering.

MR ABEY: Well, I would like to make a number of points, Mr Commissioner Gozzi.

Firstly, in my submission I was not focusing on teachers in particular, and I accept what you say about that aspect of the decision.

I was talking about a general concept. You made reference to the nurses' situation of some years ago, and indeed that the government did support that.

My submission is that the TCCI does not have to accept the blame for what I consider to be a fundamentally wrong decision on that occasion.

But your point about 50% of the workforce being on federal awards and subject to national parity is, in my respectful submission wrong.

The two concepts are different. And if you look at the exhibit that I have just tabled I think that really sheets it home.

COMMISSIONER GOZZI: Well, how is it wrong - and I will certainly look at this in a moment - but I just want to say that in the context of the parity discussions we've been having in this commission, and I don't want to prolong it, except I just want to make the point, that a lot of state employees, and I think it is around about that level of 50%, do in fact have federally determined rates of pay, but nothing to do with us at all. And to that extent where the award

applies it is the same rate here as it is anywhere else, and if it is a minimum rates award I guess there would be regional differences in the context of any over-awards that might apply.

MR ABEY: That's exactly right.

COMMISSIONER GOZZI: Yes.

MR ABEY: That's exactly right and that -

COMMISSIONER GOZZI: But the minimum rate in the awards that apply are the same.

MR ABEY: I have got no argument about that, and this exhibit in fact points in that direction, and you'll note it takes each state, and the darker line shows the actual earnings of each state - and these are 1991 figures - and the shaded figures shows the award rates of pay.

Now you'll note that indeed in terms of award rates of pay Tasmania awards are up with the pack. There is no real differential. But in terms of actual earnings and the differential between award rates of pay and actual earnings then you can see how close indeed that the award rates of pay are to the actual earnings in the case of Tasmania and how quite the opposite which can be seen in the other states to a greater or lesser extent.

Now the submission I draw from this is that earnings in Tasmania are lower. That is beyond argument. The level of over-award payments in Tasmania, or the incidence of over-award payments is significantly lower than, in our submission, any other state.

It follows from that that the impact of this decision, given that it is absorbable against over-award payments, will impact on the Tasmanian economy in an adverse sense disproportionately to that which will apply in other states.

In our submission that is not something which the Tasmanian economy should welcome.

Now in terms of the national parity argument, Mr Commissioner Gozzi, I simply make the point that in terms of minimum rates awards having the same level of award across the country does not mean national parity, because it ignores the over-award element, which clearly this exhibit demonstrates.

I'd hasten to add that they are 1999 - sorry - 1991 figures, and if anything in Tasmania I would suspect that the gap between earnings and award rates of pay would have closed through the event of the minimum rates adjustment process.

DEPUTY PRESIDENT ROBINSON: Mr Abey, could you tell us whether the earnings figures are contained straight out over awards or would they include the working of overtime, for instance?

MR ABEY: I can't from this document tell you that, and I don't think a great deal would turn on it, in any event. I suspect statistically overtime does not have a great impact on the earnings figure, and I suspect that whatever impact it does have it would be consistent, or largely consistent through the states. But I can't answer your question specifically, Mr Deputy President, because the Bureau of Stats. publishes, as you would be aware, two average weekly earning figures - one without overtime and one with overtime.

DEPUTY PRESIDENT ROBINSON: Yes. Does the graph go to awards generally, I take it?

MR ABEY: That's the only way I can interpret it, state and federal.

DEPUTY PRESIDENT ROBINSON: I just wonder, and ask it as a question, whether or not the figures there could reflect the fact that Tasmanian awards might apply mainly to the lower paid areas - Mr Griffin has mentioned the retail area - whereas the awards covering other states might cover higher paid areas such as the professions.

Do you understand my question? There might be a preponderance of award workers.

MR ABEY: Well as I understand the document, it applies across awards generally, and that the Tasmanian - the awards that apply in Tasmania would be typical of awards which apply throughout the country. They cover both the lower end of the scale and the professional areas. And there's nothing that I am aware of that would put Tasmania in any different position to any other state.

This table unquestionably includes both state and federal awards in each state, and to my knowledge Tasmania is not atypical.

DEPUTY PRESIDENT ROBINSON: Right. Thanks, Mr Abey.

COMMISSIONER GOZZI: I think, Mr Abey, it is generally accepted that in Tasmania - well, let me put it this way - I think conventional wisdom is that in Tasmania the over-awards are not as prolific as the other states, and I for one certainly accept that.

But it was interesting to note that in the national wage case the Business Council of Australia when it was asked about over awards came up with a figure of something like 15% of workers could be - Australia wide this is - could be affected by over

awards to a range of 75%. The bottom line is that nobody really knows, and I for one have always held the view that, yes, in Tasmania, arguably the extent of over awards is not as significant.

But, as far as I'm aware, no information has ever been tabled to suggest what the real situation is both in this state or nationally.

MR ABEY: It is a very difficult question and to our knowledge, or in our research, the 15% is certainly much lower than what the actual figure is, and 75% is probably higher. So it is somewhere between the two.

But there can be no doubt in my mind, anecdotally or whatever empirical evidence you require, that the incidence and level of over awards in Tasmania would be significantly less than the mainland states, and that is shown in this particular exhibit.

COMMISSIONER GOZZI: So you wonder, for instance, to the extent of any absorption against minimum rates adjustments in Tasmanian awards.

I mean, most awards in the private sector have now been treated by the minimum rates adjustment. I mean, some haven't but most of them have, and I just wonder if you are able to tell us the extent of absorption because absorption is provided for in respect of that particular payment.

I mean, how many cases does it actually represent a wage increase?

MR ABEY: Oh, it is almost impossible to answer that. If you take the biggest award such as the Retail Trades Awards I suspect that the level of over-award payments in that award both historically and currently would be less than in some other industries.

So I can't answer that. There has clearly been some absorption. The only point I could make categorically is that from that exhibit there clearly in 1991, the difference between earnings and award rates was the lowest of any state, and I would make the submission that through the minimum rates adjustment process that gap, if anything, must have closed.

But I can't put figures on it.

COMMISSIONER GOZZI: I guess the other - the other side of the coin is that with respect to this increase which you are supporting, and you are telling us why perhaps the decision federally wasn't a good decision -

MR ABEY: Mm.

COMMISSIONER GOZZI: - the fact is there will be some employers who are subject to private sector awards who will pay the increase irrespective. They won't seek to absorb it.

MR ABEY: There will be some.

COMMISSIONER GOZZI: Mm. Notwithstanding they've got a capacity to do it - to absorb it against over-awards.

MR ABEY: No, I think that's a reality - the important thing is that they not be compelled to.

So whilst, as I say, we do not welcome the decision, the circumstances do not exist which would justify a significant departure from the federal decision.

Now dealing with the federal decision, I would like to make a number of comments. The application of the $8.00 safety net must, in our submission, to be on an award-by-award basis and to that end I think we are on all fours with Mr Bacon.

Again, in line with the supplementary decision, there must be no retrospectivity in any application.

I turn now to the issue of paid rates awards and there is appears to be some confusion amongst the applicants as to what this application is all about. The application does not say that $8.00 is available for anyone who has not had an enterprise bargaining increase - the application doesn't say that. It might have been what the ACTU argued before the Australian Commission, but that's not what was granted and subsequently the ACTU, as I understand it, has endorsed the - the federal decision.

The federal decision says that $8.00 safety net is available on an award-by-award basis in minimum rates awards absorbable against over-award payments.

The industrial facts of life are that the award does not apply to paid rates awards in the federal jurisdiction. This application does not seek to apply - or does not apply to paid rates awards, it quite specifically says the $8.00 may be applied to minimum rates awards.

So I'm not seeking to justify the integrity of the federal decision, all I'm seeking to clarify is what it says and what this application says and it's not open to the TTLC to come along and indeed I don't know that they have, to come along and say, well we want the full bench decision plus we want to put in a little bit about what we really sought before the federal commission because they seemed to have missed that there.

COMMISSIONER GOZZI: Mr Abey, I listened very carefully to what Mr Bacon said about that because that very point that you are making exercised my mind as well, but Mr Bacon went right to the very part of the national wage case decision which seems to leave it open for all awards to be adjusted. Now I'm mainly anxious for Mr Pearce to get up to see what he has to say about the public sector, but page 24, the first paragraph, that last sentence - what do you think that means?

MR ABEY: I have no idea.

COMMISSIONER GOZZI: Well Mr Bacon, I heard Mr Bacon's interpretation, we've had -

MR ABEY: Well Mr Bacon read it but he didn't explain what it meant and I've read that paragraph any number of times -

COMMISSIONER GOZZI: Well he meant that paid rates get adjusted -

MR ABEY: - and I -

COMMISSIONER GOZZI: - I think that's what he meant.

MR ABEY: - I simply cannot understand what it means. All I can think it means is that a paid rates award should have a reference to a minimum rate in it somewhere and that it is - it would be appropriate to adjust the minimum rate, but that doesn't adjust the total rate.

COMMISSIONER GOZZI: Yes.

MR ABEY: Now that's what I think it means, but it is the most convoluted sentence in the whole decision and I've never had it satisfactorily explained, and indeed Mr Bacon read it but he did not explain what it meant.

COMMISSIONER GOZZI: Well, yes, I must say I read it a few times as well. But I think it's fair to say that in qualification Mr Bacon submitted that all awards ought to be adjusted by - on an award-by-award basis, and you're clearly saying that shouldn't be the case - it simply applies to .... rates awards.

MR ABEY: I'm sorry, I couldn't quite -

COMMISSIONER GOZZI: Mr Bacon made it quite clear, I think, in qualifying his comments that it ought to apply across the board on an award-by-award basis - right?

MR ABEY: Mr Bacon said the safety net should embrace all awards.

COMMISSIONER GOZZI: Yes.

MR ABEY: In other words, I interpret that as keep your options open and our submission would be that the decision clearly does not extend as an actual increase in paid rates awards and to .... to that submission I take you to the bottom of the page 24 where it says: We are mindful that in developing the award safety net in this way, a considerable number of higher paid employees who are in receipt of over-award payments or bound by paid rates awards have not yet participated in an enterprising bargaining wage increase. The continuing transition to enterprise awards and agreements including access to arbitration should address this circumstances - this circumstance.

To my mind that statement is meaningless if it was intended that employees subject to paid rates awards are to get an actual increase of $8.00. I mean I wouldn't pretend that it's the most easily interpreted in the decision either, but it is entirely superfluous if - if the bench intended that paid rates awards should get. And the application quite clearly specifies that minimum rates -

PRESIDENT: You mean that - you mean the federal decision as distinct from the application?

MR ABEY: The - no - the application which is before you - the principle before you, if you go to the arbitrated safety net -

PRESIDENT: Yes, okay.

MR ABEY: - it says - it refers to an increase in minimum award rates.

COMMISSIONER GOZZI: Is that TTLC.1 you mean?

MR ABEY: Yes. And I suppose you can - I suppose you can argue that paid rates award is also the minimum, but it makes a nonsense of the concept of what we're talking about.

DEPUTY PRESIDENT ROBINSON: Doesn't TCCI exhibit 1 demonstrate that the award rate of pay and the - and the earnings are virtually the same in Tasmania anyway?

MR ABEY: No, it says that they're much closer than in any other state.

So it follows from that, Mr President, members of the bench, that we should not confuse the difference between what the ACTU sought before the full bench and what they were ultimately given which in large measure went way beyond what they sought but didn't address every - every issue that they - they sought in the original application. But we're dealing with the outcome, not the input.

So it would be our submission that this bench must clearly find that paid rates awards - or the $8.00 safety net should not extend to paid rates awards. Now there will be debate about what is a paid rates award in terms of the Tasmanian jurisdiction. There are some such as the Nursing Homes Award, which this commission has clearly designated as a paid rates award. There are others which have not been so clearly designated but nonetheless have no - undoubtedly had the character of a paid rates award and in our submission the bench should first make a finding that paid rates awards are excluded from the decision, and secondly, if there is any doubt as to what constitutes a paid rates award, then it should be addressed at the subsequent individual award hearings.

I turn now to the question of junior employees, and that includes apprentices. If one looks at the - perhaps firstly if I can make the observation that the application seeks an $8.00 increase and supplementary payments. More than 50% of the private sector awards do not contain supplementary payments even though they may well have gone down the minimum rate adjustment process. That is understandable because hitherto, I for one have been unable to identify any sound reason why supplementary payments should be identified separately other than to confuse employers who are trying to comply with the awards. And as a consequence of that it has not been a burning issue of this commission that supplementary payments are shown as a - as a separate exercise.

COMMISSIONER GOZZI: Mr Abey, I'm sorry to interrupt -

MR ABEY: In fact - I'm sorry.

COMMISSIONER GOZZI: I'm just - sorry - on that very point, I certainly as a commissioner sitting alone with my awards I've put supplementary payments in a separate column simply to maintain the relativity that has been established where those awards have been subject to structural efficiency exercise, so the relativity in the minimum rate to the tradespersons rate is clearly established and I thought what might have been useful to maintain supplementary payments in a separate column so that that relativity that has been established on the basis of proper review is easily identified.

MR ABEY: The relativity being on the base rate or the total rate?

COMMISSIONER GOZZI: No, on the base rate.

MR ABEY: Right. Yes, well we - we all learn as we go along because I can say that myself personally and indeed I think everyone in the TCCI in determining relativities over the past four or 5 years has always referred to a base of 417.20 rather than 368 whatever it is, and as such we've looked at

relativities as being on the total rate rather than the base rate.

And in my more cynical moments I've reached the conclusion that this decision - the decision we're dealing with now was probably written about 4 years ago, because for the life of me up until now I could never identify a sound reason why, as I say, supplementary payments should be identified separately. When you see a decision like that it all becomes clear. But I've revisited the August '89 decision and there is nothing in that to my mind which makes it clear why we should have slavishly gone down what you, Mr Gozzi - Mr Commissioner Gozzi - have perhaps shown foresight that we didn't have and hence your awards are perhaps are in better shape than some others to accept this increase, because it doesn't alter the fact that we've done the exercise. More than 50% don't have supplementary payments which leads us to the question, what do we do with those awards. One submission we could make is that they are excluded. It is not a submission that we pursue because I don't think it's consistent with the spirit of the decision.

But our suggestion would be that in those awards which do not contain supplementary payments - and we're talking about minimum rates awards of course, then a separate column be established as indeed Mr Commissioner Gozzi has done in his awards and -

DEPUTY PRESIDENT ROBINSON: And others.

MR ABEY: - and others as well.

PRESIDENT: And some others.

MR ABEY: Having said that, that leads us to the question of how do we treat juniors, and I include in that apprentices. It would be our submission that in the absence of a specific award requirement linking the percentage for juniors to a total rate, that is, base plus supplementary payment, then the $8.00 should not extend - or proportion should not extend to juniors.

If one looks at federal awards, it is a mixed bag. There's key awards like the Metal Industry Award, the Engine Drivers and Firemens, Food Preservers, Furnishing Trades, Rubber, Plastic and Cablemakers to name a few, all specify that junior rates are expressed as a percentage of the base rate. It follows that they will not be adjusted in line with the $8.00 adjustment.

The ACTU, as I understand, sought from the full bench to have this question addressed in their supplementary decision and they put forward the argument that it should be made clear that extends to junior employees. The bench did not in its

supplementary decision address this, so one can assume that the status quo applies and in the absence of a specific provision, junior rates will not be adjusted.

State awards are a similar mixed bag; some do specify, some don't. It is our submission that in the absence of a specific link between the total rate and the percentage, then this commission - this full bench should determine that it does not extend to junior rates. There is nothing in the full bench - the federal full bench decision - which says it should extend. Clearly in some key awards it will not and for the sake of clarity we believe it would be helpful if the commission made a clear decision that in the absence of a clear link then it does not extend.

PRESIDENT: So no adjustment at all for apprentices or juniors if there's no clear link?

MR ABEY: If there's no clear link.

COMMISSIONER GOZZI: Mr Abey, I'm surprised you say it's a mixed bag in this state jurisdiction. I thought that where they're not linked to a specific classification rate, as you say some of them are, then the percentages in the award, and it - well let me put it the other way - I'm not aware that the junior rate doesn't link to a classification rate somewhere in the award.

MR ABEY: No, it links to a classification rate.

COMMISSIONER GOZZI: Well -

MR ABEY: It's a question of whether it links to the base rate or the base rate plus supplementary payment.

COMMISSIONER GOZZI: Oh, I see, that's the - yes, I'm sorry - that's the distinction you're making?

MR ABEY: Yes.

COMMISSIONER GOZZI: The total rate versus the -

MR ABEY: The base rate.

COMMISSIONER GOZZI: - the base rate.

MR ABEY: Yes, yes.

COMMISSIONER GOZZI: Yes, okay. I understand what you're saying.

MR ABEY: And I think you'll find it is a mixed bag.

COMMISSIONER GOZZI: Yes, right.

MR ABEY: It is not for me to suggest what was in the minds of the Australian full bench when they made the decision, but it would be our submission that with unemployment - youth unemployment - hovering close to 30%, the last thing to assist those who are unemployed at the moment would be to award a proportion of $8.00 to junior employees in this state and thus make them relatively attractive propositions than they may already be.

If the $8.00 is based on some sort of equity then in our submission they distinctly can be drawn in a general sense between adult and junior employees and distinction should be found in favour of adults.

On the question of the enterprise bargaining principle, we agree with the way that the principle has been worded and certainly the notion of enterprise awards should be available. Indeed, I think that was our submission on the last national wage case but it did not gain favour on that occasion. But certainly enterprise bargaining should not be limited in terms of processing to section 55, and the notion of enterprise awards is the appropriate way in which they should be dealt with.

I disagree strongly with the submission of Mr Bacon to the extent that enterprise awards, or indeed enterprise agreements should only address those matters - or only deal with those matters which have been subject to enterprise bargaining negotiations and that everything else should fall back on the award.

i would like to adopt the position which was publicly advocated by the Prime Minister and the Minister for Industrial Relations, Mr Brereton, earlier this year when they - they point with some criticism to the fact that most enterprise agreements were in fact just add-ons and that they were trying to implement a system through the legislature which would encourage full stand alone enterprise agreements and not just add-ons.

Unfortunately their proposed legislation, in our view, does not deliver that, but nonetheless the sentiment has been publicly expressed and in our view the submission of Mr Bacon that they should in fact simply be add-ons is contrary to the direction we should be adding.

I hasten to add that there is nothing in the principles put forward which would give weight to Mr Bacon's submission, so there is no need to make any - we're not seeking actual amendment to the principles.

COMMISSIONER GOZZI: In your proposal, Mr Abey, would you see the - the distinction between base rates and total rates -

would you - if an enterprise award contained everything, what about existing relativities that might be contained in the minimum awards at the moment?

MR ABEY: Well I -

COMMISSIONER GOZZI: Notwithstanding it's a mixed bag.

MR ABEY: - preface my remarks by that by saying that the employers have never endorsed or supported this notion of a national matrix of relativities.

It may well be convenient for the parties, the commissions, and look good on paper, but it does little else. So it's not something that as a principle we endorse. We -

COMMISSIONER GOZZI: But it's been - it's been supported though.

MR ABEY: It's been thrust down our throats.

COMMISSIONER GOZZI: Well I mean the TCCI and others have been coming up with consent proposals on relativities and structural efficiency for 4 years.

MR ABEY: Well we've had little alternative given that the decision has said we've got to do that.

Now sooner or later discretion becomes the better part of valour and as such if the decision says that we - we eventually tow the line, I suspect. You can say that. But it doesn't mean we endorse it. And we don't - I make that absolutely clear.

Now the -

COMMISSIONER GOZZI: Well how we would show up in enterprise awards in your submission?

MR ABEY: Well the principles say - the only relevant - in our submission the only relevant - can't use that word twice - relativity should only be important in terms of internal relativity within an enterprise. Relativity between awards across the country in our submission has no redeeming features at all.

COMMISSIONER GOZZI: So -

MR ABEY: It's only within an enterprise where it's important.

COMMISSIONER GOZZI: In about 5 years' time when we have a catch-up claim you won't be saying we should have kept relativities going.

MR ABEY: I don't understand the question.

COMMISSIONER GOZZI: I mean I - I think it's - I really want - don't want to be flippant about it, but I really think it's important for you to indicate whether we should in an enterprise award show the derivative rate - base rate - from the relevant minimum rates award or not.

MR ABEY: Well I would say -

COMMISSIONER GOZZI: Or do you just want to show the outcome in the enterprise award?

MR ABEY: Well I would say no, but the - the full bench principles say: Where the proposed award is not to operate in conjunction with another award then the award should specify the classification in the relevant minimum rates award where the actual rates prescribed for key classification in a new award is calculated.

Now I don't agree with that. I don't think you should have to do that, but it's - we're not here to reinvent the wheel and go through every principle line by line. I think that's wrong, unnecessary and adds nothing. It doesn't add any value at all to the wage fixing principles. But we're not seeking -

PRESIDENT: But you're prepared to go along with it?

MR ABEY: Yes. Our final submission, Mr President, Mr - members of the bench, goes to those award which are currently enterprise awards. There is only one employer who is subject to that. It would be our submission if there were awards in that category - and I know of at least one where enterprise negotiations are well advanced and on track, the it would be counterproductive to those negotiations if an $8.00 so-called safety net was imposed from outside. So we would invite the bench to reach a conclusion, that in those enterprise awards such as they currently exist, if that circumstance - circumstances does exist, then the parties should be encouraged to conclude their negotiations and put them in place without the impediment of trying to deal with an $8.00 safety net adjustment.

If the commission pleases.

PRESIDENT: Yes, very good. Thanks, Mr Abey. No questions?

COMMISSIONER GOZZI: Yes. Mr Abey, yes, I just have on that - on your last point. I assume you're talking about the Pasminco Award applicable here, and possibly to a lesser extent the TEMCO document and they may or may not be negotiating at the moment. But the Pasminco one is in fact,

as you say, an enterprise award. Now I don't know what stage those negotiations are at and I'm the commissioner that's got that area. All I know that since about May of this year we have been trying to get an enterprise-type document up either for registration under section 55 as a matter of award variation. At what point should the commission say, well in your submission it will not look at the EZ Award separately or leave it to one side?

MR ABEY: Well I think the EZ Award and others will all be looked at separately. You know, by virtue of this decision unless the commission adopts something which is contrary to what the parties have asked, and I implore you not to do that, so there will be the opportunity for the parties to the Pasminco Award, and indeed if there are others in the same category, to address those - those questions.

What I am saying is that to impose an across-the-board increase on those negotiations without regard for what is being discussed at an enterprise level will not assist in what the main game is, and that is, establish - establishing proper enterprise agreements.

COMMISSIONER GOZZI: Look, I understand that. Are you saying to us then in this decision that we're going to hand down that, we specifically make a statement excluding those or are we simply going to leave this award and other enterprise awards, if there are any others, to be considered by individual commissioners?

MR ABEY: Well I would invite the bench to - well the bench will not, it is my fervent hope, in making any orders arising out of this decision - that will be left to individual members of the commission. The bench can make of course statements of direction and assistance and I would invite the bench to make a statement to the effect that where enterprise negotiations are advanced and indeed on track then the commission will not prima facie impose an $8.00 wage adjustment but allow the parties to conclude or to pursue those negotiations. In the event that they fail to achieve the desired result then, you know, presumably the $8.00 would be accessible.

COMMISSIONER GOZZI: Mr Abey, why wouldn't you - if I understand the national wage case decision correctly - and there are parts of it that - like that paragraph we referred to a little while ago - I've got a bit of a problem with - but why wouldn't the TCCI adopt the view as on top of page 24 there, that if there was an increase that that could be absorbed against over-award - award - as certified agreements. Now we haven't got the certified agreement situation, but why wouldn't, for instance, the $8.00 go into an enterprise award, because it's an existing award, et cetera, and at a later stage if the enterprise agreement was finalised - or the

enterprise award, whatever it is that's brought forward, that some recognition is given at that time?

MR ABEY: Well I mean that -

COMMISSIONER GOZZI: I mean because it -

MR ABEY: - that's an alternative way of dealing with it. It is not our preferred option, you know -

COMMISSIONER GOZZI: Well operative date -

MR ABEY: - and I mean it comes - it comes back to your basic approach to enterprise bargaining. If the commission is to grant across-the-board unconditional wage increases, then the capacity to negotiate successful enterprise agreements is limited to that extent. So we say that this is a fundamentally misplaced decision if - if the objective is to encourage enterprise bargaining.

COMMISSIONER GOZZI: Well I guess it has impact on the operative date, and I think you said about operative date that it should apply from the date that each award is scrutinised and whatever happens in those proceedings. So you oppose 1st December operative date?

MR ABEY: Well the operative date has never been the 1st December.

COMMISSIONER GOZZI: The decision.

MR ABEY: In the federal decision, the operative date is very clearly at the best the date that any award was varied.

COMMISSIONER GOZZI: Yes, alright. So the principles should operate from - from now or whenever the decision is made, but awards vary as and when they come forward?

MR ABEY: That's correct.

DEPUTY PRESIDENT ROBINSON: Mr Abey, whilst you're on your feet, your recent suggestion to us about, as I understand it, not interfering with the processes of enterprise bargaining by imposing the present adjustment which might otherwise apply, begs to me the question that how the commission is to settle industrial disputes which may arise during the course of bargaining and the parties become locked in.

MR ABEY: If you read the - the Brereton package, Mr Deputy President, the commission has no real in assisting the parties out of those deadlocks.

DEPUTY PRESIDENT ROBINSON: Is that what you would want?

MR ABEY: No, it's not something we've endorsed and we'd - and in fact we've made submissions .... to the Commonwealth Government and the Australian Democrats that that is a fundamental flaw in the Brereton package. It's not something that we welcome or seek. And we note that under the enterprise award principle there is now capacity for arbitration as a last resort. We have some trepidation about that because it doesn't sit comfortably with the ....tion of enterprise bargaining, but we are prepared to give it a run and provided it is exercised as a last resort and with the - the covenants that attach, then, as I say, we don't oppose or seek to change that particular aspect. The commission has a clear role in getting the parties out of a hole, I guess, when it gets too tough. I don't know if that answers your question.

DEPUTY PRESIDENT ROBINSON: I understand your position.

MR ABEY: Thank you.

PRESIDENT: Yes, thanks, Mr Abey. We will adjourn now until 2.15 this afternoon.

MR ABEY: We'd be able to continue on now and finish by, say, 1.15.

PRESIDENT: Well let's hear from you, Mr Pearce and other members of the - who are here.

MR PEARCE: Is this just an analysis of the length of time that -

PRESIDENT: Just an - an impression as to how long you might be -

MR PEARCE: Hopefully about 5 minutes, Mr President.

PRESIDENT: Yes. Mr Rice?

MR RICE: No more than 5 minutes, sir.

MR HARGRAVE: I'll go with the consensus.

PRESIDENT: Yes. Ms Byrnes?

MS BYRNES: Five to 10 minutes, sir.

PRESIDENT: I think 2.15 should get you out of here by 3.00 as you wished, Mr Bacon.

MR BACON: Certainly.

PRESIDENT: Yes, very good, we'll adjourn to 2.15.

LUNCHEON ADJOURNMENT

PRESIDENT: Mr Pearce?

MR PEARCE: Thank you, Mr President, members of the bench. The position advanced by the Tasmanian Government to the recent Australian Industrial Relations Commission full bench review of wage fixation from whence the instant application of the Trades and Labor Council is derived was that there should be the retention of wage fixing principles. But in maintaining a set of principles the government proposed the existing principles be relevantly amended to provide improved access to and promote a hastening of the devolution of the responsibility of industrial relations to the enterprise parties.

On that aspect there was clearly unanimity amongst the majority of parties and interveners and acknowledged as such by the full bench.

The evident differences between the parties and interveners was the manner by which this greater focus of enterprise based arrangements was to be achieved.

Ultimately the full bench determined in light of the submissions placed before it to retain and revamp wage fixing principles in order to give stimulus to the enterprise considerations whilst ensuring that such is undertaken in a relatively controlled, stable and regulated environment.

Insofar as the Australian Commission has provided the wherewithal to further enhance this devolutionary process, we support that element of the decision and the terms in which it is expressed.

In support of the retention of wage fixing principles, Tasmania submitted, having regard to movements in awards of this commission that the principle of structural efficiency and the minimum rates adjustment process should be maintained. That position was advanced on a review of private sector awards of this commission which indicated that on an award-by-award review progress towards the finalisation of structural efficiency and minimum rates adjustments process had produced mixed results.

Some had completed the process, some were part way there, while some had yet to commence.

We similarly supported that modification of the enterprise bargaining principle in line with the generality of propositions put forward by PEAK employer organisations. That position was duly encompassed in the review decision in the

form of the enterprise awards principle supplanting the previous enterprise bargaining principle.

The Tasmanian Government supports the adoption of the enterprise awards principle relevantly altered to comply with local legislative prescriptions in the manner proposed by the applicant.

On the aspect of the $8.00 arbitrated safety net adjustment, the Tasmanian Government in a stance adopted by a number of parties and interveners in the Australian Commission, refrained from making submissions on that matter in part due to the fact that there was no award application before the commission.

We did say however that if such an application were to eventuate at a time subsequent to the review proceedings the issue would be considered at that future time.

The decision of the commission to incorporate into the principles access to an $8.00 safety net adjustment through variation to the supplementary payment component of awards in effect provides the government in the form of these proceedings the first opportunity to canvass this particular aspect.

And briefly we say that to the extent that the commission has provided the opportunity for employees to benefit from a wage increase which is not linked to productivity and efficiency improvements at the enterprise, we express disappointment

However, we do acknowledge the reason contained in the commission's decision and accept that they have prioritised the remuneration circumstances of low wage and salary earners being those who have a low level of award wage, who do not benefit from substantial over-award payments and who have not benefited from enterprise-based arrangements.

In the knowledge that the commission has stressed that distribution of the available increase is to be considered on an award-by-award basis, that the amount is capable of absorption against equivalent payments, award over award or certified agreement based and is not a general wage increase, the Tasmanian Government does not oppose the Tasmanian Commission adopting the principle of the arbitrated safety net adjustment in the terms specified in the application.

Mr President, members of the bench, this commission has a history following due enquiry of adopting decisions and principles of succeeding Australian Commission full benches. We submit that on this occasion there appears to be no impediment to doing likewise save and accept for amending to satisfy local circumstances. Such changes should be procedurally based and should not, in our submission, disturb

the essential elements and reasoning explicit and implicit in that decision.

If I might turn to a number of matters which were raised in the course of proceedings this morning. Firstly, the issue of the enterprise awards principle and the need perceived - or the perceived need to distinguish between enterprise agreements made pursuant to Part 4A of the act and enterprise agreements made pursuant to section 55 of the act. Perhaps by way of suggestion, incorporation of the reference to section 55 - enterprise agreements - in the title of that principle would go somewhat to clarifying the distinction.

Commissioner Gozzi raised the reference to the 1992 February decision of this commission which introduced the enterprise bargaining principle and we concur that it is relevant that it be supplanted into this decision of this commission where relevant.

We acknowledge the availability of enterprise arrangements through section 31.1A and B stemming from section 23 applications plus of course section 55 agreements in the context of the AIRC decision.

On the issue of multiple enterprises we concur that there may be sufficient flexibility within the definition of enterprise to address and satisfy the issued addressed by the Trades and Labor Council. Once again submissions before the commission and subsequent hearings on an award-by-award basis would be a relevant consideration.

On the aspect of paid rates we similarly share the concern expressed this morning during the course of this morning's session on the role of paid rates awards in the context of the Tasmanian Commission.

Clearly it is a matter which offers the opportunity for some further debate.

Ultimately there are those - ultimately those who are to be entitled to the arbitrated safety net adjustment of $8.00 will be considered on an award-by-award basis, where amongst other issues the relevance of the decision and the principles will be tested in the light of competing submissions.

At this stage we would submit that those who have made submissions going to the availability of the $8.00 for all of those who have not had the benefit of enterprise based arrangements may be basing their position on optimism rather than industrial reality.

Certainly we do not share their expectations. We concur with the submission of Mr Abey that in respect of those areas that he addressed where the relevant supplementary payment process

had not occurred then it would be a relevant consideration to embark upon that process.

PRESIDENT: Mr Pearce, can we go back a moment to the point you were making about paid rates awards?

MR PEARCE: Yes.

PRESIDENT: And you were saying that you couldn't share the optimism that you thought was being expressed by some of the employee organisations. You yourself indicated that one of the - one of the - that the - that the federal decision in fact seemed to indicate to the government that those who would be entitled to the increase would be those on low level wages, those who had not participated in enterprise bargaining and those who did not have a significant level of over - over awards. How - can you be more specific in terms of how you'd see those criteria applying in respect of public sector awards?

MR PEARCE: Well it's got very much to do, I would have thought, Mr President, with the undefined low wage and salary earners and I think it would be a matter of debate and submission - competing submissions - perhaps, at a relevant time if and when applications are made by organisations seeking to vary awards for that particular amount.

Now whilst we say that - or we respond to the commission's inquiry as to paid rates in the context of this jurisdiction we would say that there are many awards particularly in the public sector which, to quote Mr Abey, have all of the characteristics of a paid rates award.

Extent to which paid rates awards are relevantly disentitled to consideration of the $8.00 is once again an issue which would be the subject of submissions at a future time.

COMMISSIONER GOZZI: You don't see any merit in trying to grapple with that situation in a general sense in these proceedings? Because we - we have to an extent a different view from the TTLC; the question of paid rates, as I understood, it was certainly discussed on the basis that that particular paragraph on page 24 envisages prima facie anyway that where there is no minimum rates linked to the paid rates award - in other words, if there wasn't a key classification that the paid rates was based on that there didn't appear to be an impediment to the paid rates award being adjusted. That's the way I understood it anyway.

MR PEARCE: Well that it itself lend itself to a structuring of that award to reflect and then one analyses what the outcome is to determine whether or not, so I think it's probably, with respect, a matter which is probably best -

better addressed in the context of the individual award before the commission at that time.

COMMISSIONER GOZZI: Yes. Yes, I understand you're quite content to leave it to that time?

MR PEARCE: Yes, Mr Commissioner.

COMMISSIONER GOZZI: I suppose in a - in a general sense I would have liked to have known the attitude of the government too, if you're proposition is correct that most of them are paid rates awards, what the general attitude of the government is to those particular employees subject to those paid rates awards. In effect, if I read through - if I read in between the lines, are you really indicating that in the public sector the $8.00 wouldn't apply by virtue of the fact that they are paid rates awards.

MR PEARCE: I'd say it's an issue of debate and I have no instructions as to what attitude may subsequently be conveyed by the government in relation to an application which might be made. I mean because we really are hypothesising at this stage.

COMMISSIONER GOZZI: Right, thank you, Mr Pearce.

MR PEARCE: If it please the commission, that concludes my submissions.

DEPUTY PRESIDENT ROBINSON: Could I ask you, Mr Pearce, is there any good reason in your view why wage fixing principles should apply to section 55 agreements or consent enterprise awards? Is it your position that the wage fixing principles should be applied in relation to section 55 agreements and enterprise awards?

MR PEARCE: Yes, it is, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Well I guess the supplementary question is then, why wouldn't the wage fixing principles apply to any agreement?

MR PEARCE: It's a position in which I have no instruction beyond supporting in the mainstream award approach and agreements, the application of wage fixing principles to any arrangements which might be forthcoming under that particular - or those areas of that legislation.

DEPUTY PRESIDENT ROBINSON: I'm just a little bit confused in that your - in your opening address you said that according to your instructions you are disappointed at the decision to give an $8.00 adjustment without improved productivity. But isn't it possible that consent arrangements could go through under section 61 of the act without any consideration of improved

productivity or anything else which attaches to the present wage fixing principles?

MR PEARCE: Well we submit, Mr Deputy President, that the Part 4A arrangements are stand alone arrangement. That the decision of the federal commission was in the context of enhancing - enhancing amongst other things enterprise arrangements within the mainstream - within mainstream awards and consent awards as distinct necessarily from Division 3A of the federal commission's jurisdiction.

So my instructions are in relation to the application of the principles to enterprise arrangements which might derive from section 23 applications of this commission or under section 55.

DEPUTY PRESIDENT ROBINSON: Isn't it possible though that an application could be made under section 55 which wouldn't be sustainable on public interest criteria but that the same agreement could be ratified under section 61?

MR PEARCE: That's a - that is something which could occur.

DEPUTY PRESIDENT ROBINSON: In fact would have to occur provided - provided those other minima were complied with.

MR PEARCE: The relevant tests are, as you apprehend, quite distinct between the two sections.

A position that the Australian Commission also had to grapple with in relation to the competing or the reconciling of -

DEPUTY PRESIDENT ROBINSON: Yes, but - but in grappling with - with that very question here today, why wouldn't the commission want to take an even handed position where there would be a - the same treatment to any sorts of consent arrangements - by the same set of principles applying or not applying to consent arrangements if the thrust of the present principles, even as amended is still, as I understand it, the encouragement of enterprise bargaining.

MR PEARCE: For both areas we submit both areas of the legislation, or the principles on the one hand in relation to the mainstream area -

DEPUTY PRESIDENT ROBINSON: Yes, well I -

MR PEARCE: - or -

DEPUTY PRESIDENT ROBINSON: - of course - of course we are - must all accept what the legislation says, but here we're dealing with wage fixing principles which is distinct and separate. And my question is, why wouldn't we adopt something

which is consistent in its approach so far as consent arrangements are concerned?

MR PEARCE: Well, given the - the statutory requirements act, vis-a-vis section 55, for the commission to have regard to the public interest in ratifying agreements -

DEPUTY PRESIDENT ROBINSON: Well, certainly, as we all know, section 36 deals with the economic situation of any industry, the economy of the state, but with particular emphasis on the level of employment and then as any other relevant matter.

Certainly I accept what you're saying provided that those criteria are satisfied, why should the commission have any regard at all to anything else like a set of wage fixing principles?

MR PEARCE: Well my instructions are to urge upon the commission the intention of wage fixing principles. I have no instructions which go beyond the parameters of the immediate matters before the commission.

DEPUTY PRESIDENT ROBINSON: Yes. I understand your situation. Thanks, Mr Pearce.

MR PEARCE: ...., deputy president.

PRESIDENT: Yes, thank you, Mr Pearce.

MR PEARCE: Thank you.

PRESIDENT: Mr Rice?

MR RICE: Mr President and members of the full bench, the genesis of K9700 was commenced at the national level with the National Farmers Federation and others seeking to rationalise occupational superannuation. It ended up as an $8.00 per week increase which the NFF and others at the national level vigorously opposed.

It is not without good reason that we feel constrained to continue to oppose this claim. We concur with Mr Abey in respect of the reality of the situation, but our opposition to the flow must be judged against the following background: Sir, the farmers of Tasmania feel great empathy with the lower paid workers because since 1990 they have seen enormous erosion in their profit margins to such an extent that they have been operating with substantial deficits since then.

Incomes for farmers have been affected by a number of factors, perhaps the most significant being the world recession and the competition this has created with other countries that compete for our markets, particularly in the grain, vegetable, dairy and meat markets.

There is little purpose in pursuing the fortunes of the wool industry as these producers are predominantly covered by a federal award which is currently subject to an incapacity hearing.

Our vegetable industry sustained a 20% cut in prices offered to growers in 1990 together with a substantial reduction in area. This is in the potato, pea, brassica, onion areas. Those reductions still remain today but with no increases. This has put enormous pressure on these farmers in regard to equity levels and ongoing development and maintenance including the total lack of investment in capital items.

There has been a dramatic reduction in the numbers employed with many farmers opting to let contractors complete many of the tasks previously done by employees.

Another area where we have felt huge reductions - it's a supplementary industry to the vegetable industry - is in the alkaloid industry. Five per cent reduction in '91/92 with a 33% reduction in area, a 3% reduction in price again in '93/94. This has seen a 30% reduction in farm gate value in that particular area. Again we are looking at substantial reductions for the coming year.

Sir, going to some - away from the vegetable areas, we've been following the fortunes or otherwise of a basket of 38 farmers since 1989/90. This has not been done by TFGA, it's been done by an agricultural consultant in Armstrong Agricultural Services of Launceston. The analysis is 38 grazing, dairy and mixed - dairying and mixed cropping farms in the south, midlands and central northern regions of Tasmania has been conducted. The basket of farms includes mixed grazing and cropping properties - 40%; extensive grazing sheep and beef - 50%; and dairying 10%.

The analysis indicates the average operating income for the basket of properties in 1992/93 was $345,568. Average operating costs were $350,576, producing an operating deficit of $5,008. An operating surplus is required to meet the costs of replacing and equipment and living expenses allowing an average of 20,000 for capital replacement and 27,500 for living expenses, indicates an average cash deficit for these farms of $52,508.

The report goes on to say: trading prospects for '93/94 are expected to improve in the dairy industry and remain at present levels or improve slightly in the cropping industry due to the areas of crops, but at present prices. The farms in the group are generally moving to greater reliance on crops for income.

Improved wool prices are expected to be offset by lower wool cuts. The lower wool cuts go to a number of factors to climatic conditions, but mainly because the farmers in their current financial situation haven't had the ability either for crop improvement or crop maintenance.

The events of recent times and the cooperation of the union movement regarding fertiliser are not lost upon us. The fact is while we have supplies of fertiliser at the present time, it's - there are - those in the midlands districts haven't the capacity to buy that fertilizer in the amounts required.

The basket of farms covers a range of farmers with a gross operating income of 80,000 to about $1 million with an average of $346,000.

The general comments made by the consultants; the late - the late winter and spring have been drier than normal in most districts and there are fears that yields of dry land spring crops will be adversely affected. Budgeted incomes for crop sales are unlikely to be met. Sheep prices have fallen in recent weeks and prices for surplus sheep are expected to fall.

Cattle prices are remaining firm although depressed. He go - concludes with, pressure on the viability of farmers continues and with the losses of recent years, farmers are reducing input costs as much as possible. The losses of recent years are a threat to the continued viability of many producers. Expenditure in all areas is being minimised and it is noticeable that many properties are deteriorating. Structures such as fences, yards and buildings are not being adequately maintained. Farming plant is also deteriorating as most farmers cannot afford to replace equipment with more cost effective replacements.

Expenditure on outside labour has been minimised with the property owners and their families doing much work which used to be done by employees.

The basket of 38 farmers -38 farms - is - had at least one full-time employee on it and in some instances there have been more.

Members of the full bench, we have given the above thumbnail outline of the Tasmanian agricultural scene, not as a picture of doom and gloom but as one of an industry under extreme financial pressure, but we will survive. To be a farmer one must be the eternal optimist. We need to overcome world - we need to become more world competitive. We need to benchmark with the best in the world if we are to penetrate new markets and maintain existing markets.

We're continually being bombarded - and this is not an authoritative document by any means, it's just purely a golden wing document where they recently spoke to the managing director of MacDonalds Australia are going to turn over - in 20 years this will be the first year they'll have a billion dollar turnover, and Peter Ritchie is quoted as saying from - he's not giving us much of a plug, but from the start he had trouble getting the right potatoes for his french fries; he found there was virtually only one potato grown in Australia - the Kennebec - in Tasmania where the potatoes grow they grow Kennebecs. I had them analysed and their solid content just wasn't up to MacDonald's specification. I asked them, can you grow American potatoes - the Russet Burbank - it was almost blasphemy for me to say it. I had to take a pretty stance. There were importing restrictions, we were only allowed to import a small number. I had to use a Kennebec to start - it took me 7 years to grow a crop of Russet Burbank big enough to harvest - now it's all that's grown in Tasmania. MacDonald's value to the Tasmanian economy would, he asserts, be significant. Last year he had to import potatoes from Canada because of a bad crop in Tasmania. Peter says he can import cheaper from Canada and the US than he can buy in Tasmania.

It's sad, he says, it seems to me that we would be able grow potatoes economically not only for - not only are they more expensive for me but I can't sell them in Asia. I had visions of creating a giant market throughout our Asian outlets but our potatoes are too expensive compared with those in the US. However, Peter says he is talking to Pacific Dunlop who owns Edgells, the producers of the spuds, but - about the web of costs involved. Talking to Edgells he is talking about a 25 - a further 25% reduction in the price of potatoes for the Tasmanian producer .... competitive with those of New Zealand and the US.

DEPUTY PRESIDENT ROBINSON: Mr Rice, no doubt that's a serious situation, but I wonder - and you know, I recognise the model that you've put forward, but I just wonder at the impact - the protection that goes on and what the real cost of the potato is, what the producer gets for the potato over there because ultimately a lot of that stuff that we buy from there or import is in fact close to be dumped on our markets isn't it?

MR RICE: Yes, sir. The majority - oh, well I shouldn't say the majority is, but a great deal have got difficulty with the Australian import rules regarding much of the rural product, or for instance, mutton from New Zealand is being dumped - we would maintain - is being dumped on the Australian - consequently Tasmanian market -

COMMISSIONER GOZZI: Yes, I'd be interested to know just how we compare cost for cost with some of these countries.

MR RICE: It is very difficult to reach a comparison particularly on fuel for instance. Our costs are much greater on fuel than they are in the US. Our costs on machinery itself and on its parts and on government subsidies that - that run some of the agricultural areas, particularly in Canada benchmarking through New Zealand, those types of things, they all impact on us but they do - they are taking market - they are coming to Australia and taking our markets but they also are going to the Asian Pacific ring where we are looking for markets which you can't penetrate because of costs.

I'm not saying it's labour by its very nature, but it - but they are all costs that go to help us - or go to work against us.

PRESIDENT: Has the exercise - has the exercise been done on comparative labour costs?

MR RICE: Well it's been done to the extent, Mr President, on the basis of, if we're comparing New Zealand dollars and US dollars all on the same benchmark. The New Zealand labourer, for instance, is on $5 an hour and the US market is on $7 per hour Australian - that's what we're competing with.

Farmers -

MR ....: .... thought it was three US dollars.

MR RICE: Gentlemen, it is for these reasons that we oppose this claim. Farmers have sustained significant decreases in commodity prices since 1990 with no meaningful relief in sight. We fully understand the position of those seeking this increase but tragically those employed is that it seeks to help the employees who jobs are most vulnerable in the current economic environment.

Given that is our primary position, we'll always look to a fallback position to this commission and should the commission decide to grant an increase, once again we fully support the position of the TCCI in that the increase should be available a), from a specific date in the future sometime on an award-by-award basis and with no retrospectivity.

One question that does come to mind that has concerned me, is what is going to the MRA relativities that have been created by the introduction of MRAs in the 1989 decision of this commission and similar federal decision, is this a dollars to operate on the tradesman's rate on - just on the supplementary payment as it applies to that rate or is it go on all the supplementary payments as they - as they progress, say, from 78% through to 150% or whatever the case may be. I don't know the answer to it. In - in my submission it would be that it

should operate on - at the tradesman's rate at 417 on the supplementary rate as it applies - as the supplementary payment applies to that particular classification.

If it please the commission.

COMMISSIONER GOZZI: So, in effect you're saying that for the $8 at 417 represents 100%

MR RICE: Yes, sir.

COMMISSIONER GOZZI: - and up - downwards I can see what you're saying.

MR RICE: Yes.

COMMISSIONER GOZZI: What are you saying about the relativities?

MR RICE: Well it should have to go the other way too, commissioner.

COMMISSIONER GOZZI: So you're saying relativities up and down?

MR RICE: Yes.

COMMISSIONER GOZZI: So more than $8.00?

MR RICE: It could go more than $8.00 in some - in some areas - in other areas it would go less than $8.00.

COMMISSIONER GOZZI: Right, just to maintain the relativity.\

MR RICE: Maintain the relativities as they have been created, or, I would think the bench would need to make some comment on that we're not going to have a claim in the future as a result of the decisions like this to - to draw back those relativities.

COMMISSIONER GOZZI: Yes.

MR RICE: As they now stand - prior to the decision.

COMMISSIONER GOZZI: Say 75% - around about $6 to $12 and 150 in your example.

MR RICE: Yes, sir.

COMMISSIONER GOZZI: That's an interesting approach too.

PRESIDENT: Yes, thank you, Mr Rice.

Mr Hargrave?

MR HARGRAVE: If the commission pleases. PATEF's position is in support of TCI in that we believe that the provisions of the federal decision should be the principles that are adopted not only in this state but in all state jurisdictions.

We also support TCI's position that no retrospective adjustments should occur. That adjustments should be done on an award-by-award basis on application by the union, and those adjustments should flow from the date of decision of the respective commission or the commissioner dealing with the particular matter.

In relation to the absorption in over-award payments PATEF's position is very similar to the farmers' situation that has just been put to you.

We would be relying on the August 1989 national wage case decision in which minimum classification rates and supplementary payments were established, and from that a number of varying rates above and below the trade rate work prescribed.

Most of those awards, or many of those awards, have taken their genesis of the rates from the Metal Industry Award and particular in Tasmania I understand that the relationship between awards of the Federal Commission and awards of this commission have tended to use the same percentage rates.

Mr Abey this morning raised the matter of junior employees and apprentices, and my understanding of Mr Abey's submission at that particular stage was that the $8.00 should be extended to junior employees but be expressed as a percentage of, if it wasn't applied in the award of the award.

Now we would say that that submission -

PRESIDENT: I'm not certain that that was quite what he was saying, Mr Hargrave.

MR HARGRAVE: I'm sorry?

PRESIDENT: I don't think that's quite what Mr Abey was saying. I got the impression he was saying it shouldn't go to juniors and apprentices unless there was a clear link demonstrated in the award, whether it be by percentage or some other classification system.

MR HARGRAVE: Well, I think that was the point I was trying to make, commissioner - Your Honour (sic).

PRESIDENT: And which would presumably result in some sort of proportionate increase. If there was a link.

MR HARGRAVE: If there was a link.

PRESIDENT: But if there was no link, no increase.

MR HARGRAVE: That's right, yes. So if an award prescribed a 60% percentage of whatever rate for a junior, then that's what I understood Mr Abey was putting to the commission.

PRESIDENT: Yes.

MR HARGRAVE: We would say that that supports our submission, and also the farmers' submission that the percentages that have been established through the history of the wage principles are the principles that should be utilised, particularly when we look at the supplementary decision of the Federal Commission, which is contained at page 3.

But what the commission is saying, or indicates there, that the parties to those supplementary decisions indicated in their written submissions a number of questions.

One of the questions that the commission addressed from the parties was those matters of `the appropriateness of safety nets based on interrelated classification rates and supplementary payments in awards', bearing in mind that in 1989 we had the supplementary payments.

They also suggested that parties raise the `problems which the adjustment might create for particular employers (e.g economic incapacity)' and `the contention that the safety net mechanism outlined in the decision is imprecise and confusing'.

What the commission went on to say was that:

> We do not intend to discuss these matters at any length in this decision. Suffice it to say that the safety net mechanism we earlier decided should apply is based squarely on the national framework of minimum award rates established as a result of the 1989 National Wage Case decision and consolidated by subsequent decisions.

- of that particular commission.

It would be out submission that the matters of adjustments to awards in this state should be handled, as I said earlier, on an award-by-award basis.

We support in general the position put by Mr Abey and also the submission put by the National Farmers.

It is not my intention, if the bench pleases, to comment on the matter of section 33 and section 55 matters. I believe that that has had a fair airing, and that will be our submission.

If the commission pleases.

COMMISSIONER GOZZI: Mr Hargrave, do you support Mr Rice's submission with regard to applying relativities to the increase?

MR HARGRAVE: Yes, commissioner, and the reason we support that is on the basis that in most federal awards those relativities have been tested or are in the process of being tested, and it would be our submission that if you apply a minimum $8.00 adjustment to, say, the 74% rate then you will have problems with not only relativities in the awards but you are liable to end up with relativities within the enterprise as well, which could lead to problems which may manifest themselves in something other than an enterprise agreement.

What I am saying is, it could manifest itself in stoppages, it could - I know these decisions haven't really addressed it - but we could go back to the old problem of comparative wage justice, and that is a concern that this could raise.

COMMISSIONER GOZZI: Alright. Thank you.

PRESIDENT: Thank you, Mr Hargrave. Ms Byrnes?

MS BYRNES: May it please the full bench. Australian Mines and Metals Association is a national organisation of employers .... mining, hydrocarbons and related industries.

The purpose of the organisation is to serve employer relations interests of its member companies, and I am today representing the Tasmanian Branch of the association.

The position in the mining industry in this state is that in general terms it is not opposed to the flow on of the national wage case decisions to this state, nor does it oppose the potential availability of an $8.00 arbitrated safety net increase as such, but it does wish to express its general concern regarding the concept of arbitration in the context of an environment of devolution of wages linked to enterprise.

And, similarly, the concept of a matrix of industry-wide relativities in such an environment.

And I wish to make a brief submission in that context.

Due to the nature of this country's current industrial relations system which includes a system of awards and compulsory arbitration and certain entrenched rights of unions

to represent employees, we support the retention at this stage of a set of wage fixing principles, and therefore will be seeking that the Tasmanian Industrial Commission handed down a set of principles as has been done by the Australian Industrial Relations Commission.

It is vital, in our submission, that any set of wage principles enhances and builds upon the concepts of structural efficiency, productivity and enterprise both as to relationship and arrangements which has been established in previous wage decisions.

This is necessary if we are to achieve viable enterprises, international competitiveness and improved employment opportunities.

It is not our intention to put to the bench submissions concerning the economic circumstances faced in Tasmania or the capacity of industry generally to support a wage increase.

Our submissions will be confined to the mining industry.

It must be stated that Tasmanian mining companies are experiencing substantial difficulties as a result primarily of depressed commodity prices.

In some cases the situation is resulting in companies reviewing the time spans in which they can viably continue to operate.

In other cases reviews in restructuring exercises have been undertaken to reduce costs and to press even further the productivity gains.

These activities have in some cases resulted in the necessity for redundancy exercises. In some cases significant numbers of employees have been retrenched.

It is public knowledge through reports in the media that almost all of the mining operations in this state have reduced employee numbers in 1993.

However, despite the grim economic environment which the industry finds itself, it does not in general terms argue incapacity to pay a wage increase because it has a philosophy of practice of equitably remunerating its workforce.

It does not reject the flow on of the ability for an $8.00 increase as such, but it does have real concerns about the method of application.

The main issue is the necessity for increases to be determined directly by the parties concerned.

The October 1991 National Wage Principles clearly signified a shift in emphasis in industrial relations towards enterprise level negotiations, a greater emphasis on the implementation of structural efficiency at the workplace, a restricted arbitral role for the commission and the linking of wage increases to productivity improvements and increased efficiency at the enterprise level.

Wage increases, according to this philosophy, are to be available commensurate with the efforts of employees in achieving efficiencies and productivity, with the opportunity for them to benefit from the improved performance of the enterprise in which they work, subject to favourable economic conditions.

For the commission to be able to override particular enterprise conditions and grant a particular wage increase, in this case $8.00, creates difficulties which were identified in the October 1991 wage decision.

These were listed as follows, and I quote from page 4 of that decision. Firstly:

> The absence of satisfactory proposals from the parties as to how achieved productivity should be measured and/or distributed.
>
> 2. The potential for inequities in systems of enterprise bargaining based on achieved productivity.
>
> 3. The likelihood that arbitration will aggravate flow-on effects with attendant industrial disputes.
>
> 4. The possibility that an arbitration will be taken as directing the standard for enterprise bargaining which may necessarily constrain outcomes in other cases.

To these one could also add the possibility that the parties will not make the requisite effort towards achieving their own appropriate outcome because of the knowledge that they can fall back to a safety net increase.

There is also the possibility that an arbitrated increase will cut across or undermine company-based award systems based on assessment of contributions by employees through individual appraisals.

Certainly such systems are becoming commonplace in the mining industry.

As unions tend to be suspicious of such systems they do not support traditional union principles as collectivism and egalitarianism there exists the possibility that the availability of the safety net increase will allow unions to obstruct the use by employers of salary policy systems.

We'd be very concerned, for example, at the possibility for the commission to award $8.00 whilst enterprise bargaining negotiations were proceeding, and for that $8.00 to then be subtracted from the eventual increase arrived at.

Such an approach would directly undermine the bargaining relationship between the parties and the rights of the parties to arrive at their own wage outcomes.

COMMISSIONER GOZZI: Why do you say it would do that?

MS BYRNES: Because, Mr Commissioner, there may be a sophisticated array of methods in a particular workplace by which salary increases are arrived at, and salary determination is really a matter for the direct parties. I think that has been acknowledged in previous wage cases.

And, in that case, it breaks away from the - the philosophy that Australia is moving towards is that the tribunal is not the granter of benefits but rather the employer - and it is for the parties to determine what level those benefits should be.

COMMISSIONER GOZZI: Ms Byrnes, how would that be different just because an agreement may be about to be negotiated, how is that different to an agreement that is not yet conceived and may be negotiated, say, next March or April? Is the only difference the operative date that the $8.00 might apply in the award?

MS BYRNES: The example I was referring to, sir, was discussed previously today about - and it arose from Mr Abey's submissions - where the parties had already proceeded down the path of negotiating an enterprise agreement and one of the parties claimed that the progress was unsatisfactory, and therefore the commission was of a mind to award $8.00 which could be subtracted from the final negotiated amount when that process was completed.

That was the example -

COMMISSIONER GOZZI: Why wouldn't that be a good idea?

MS BYRNES: Why wouldn't it be a good idea?

COMMISSIONER GOZZI: Mm.

MS BYRNES: Because, as I have said, it takes away from the direct parties the ability to determine their own wage outcomes, because an element of any given wage outcome would be that which was granted by a third party.

COMMISSIONER GOZZI: All other parties in minimum rates awards not negotiating at the moment could if this package was picked up access the $8.00. So the only difference may be that those who are negotiating, on your submission, should be left to one side until that negotiation is complete.

MS BYRNES: That was the point that I was making, sir, yes.

COMMISSIONER GOZZI: But doesn't it have a direct impact on the operative date of at least the $8.00 if it was to be granted if the package was up and running? What incentive is there to conclude the enterprise negotiations in a reasonable period of time in your scenario?

MS BYRNES: Well, by the same token, one could ask what incentive there was for employers to complete the enterprise bargaining .... when an $8.00 increase had been granted.

COMMISSIONER GOZZI: And more fundamentally, perhaps, isn't it a fact that this $8.00 if it was to be granted isn't tied to a productivity agenda?

MS BYRNES: That's correct.

COMMISSIONER GOZZI: So how do you reconcile those two situations?

MS BYRNES: Well, what we are stressing in these submissions is that any applications must be considered on an award-by-award basis. We're not asking the tribunal to make a statement in its decision that any parties currently engaged in enterprise bargaining negotiations should be specifically excluded, but we're merely making the point that it is vital that every circumstance is considered individually by the commission.

So, in essence, what we are saying is that an enterprise based approach with a limited arbitral role is essential for the establishment of appropriate wage levels.

And that philosophy, in our submission, has now also been recognised by the legislative changes in Tasmania which occurred in 1993 which establishes and facilitate the enterprise focus and illustrates the Tasmanian Government's commitment to reform, based on enterprise level outcomes.

And we make the observation that under the new enterprise bargaining provisions, and that is under section 61 of the Act, no arbitration is available.

Now that legislation provides certain potential for workplace flexibility and freedom and, therefore, it is the submission of the mining industry that in no way should that legislation be altered to provide a capacity for the enterprise commissioner to arbitrate on enterprise agreements.

It is of continuing concern to us that the TTLC fails to acknowledge the new enterprise bargaining provisions of the Act, seeking instead section 55 in preference.

In relation to that matter Mr Bacon has handed up his proposed changes to the wage principles to suit the Tasmanian environment, and under the heading, `Enterprise Awards' he makes specific reference to section 55.

Now it is our submission that in relation to that principle section 61 also needs to be recognised as a mechanism by which enterprise agreements can be registered.

In saying that, though, we recognise that making specific reference to section 61 in the wage principles could create some confusion as in our submission wage fixation principles do not apply to enterprise agreements registered under section 61.

PRESIDENT: I am losing the thread there a little. Are you saying that we in a utopian world should refer to it but we really can't because we are constrained by the Act?

MS BYRNES: What I am actually seeking from the commission is not a reference to section 61 of the state wage principles, but rather an acknowledgement in the wage decision that section 61 is a means which is available to the parties for the registration of enterprise bargaining agreements.

Having said what we have about the undesirability in this environment of enterprised based arrangements of arbitration I must go on to say that if the Tasmanian wage bench is persuaded to allow the use of arbitration in granting safety net increases then that would have to occur under sections of the Act other than section 61, and such an approach would be consistent with that approach taken by the national wage bench where certified agreement provisions are remaining unchanged and claims for arbitrated increases on the other hand are only available to be made under the consent award provisions under section 111, although the irony in that approach should be noted.

And it is, in our view, not entirely satisfactory in the federal jurisdiction that disputes are being dealt with under consent agreement provisions, but I presume that has arisen due to particular .... the federal Industrial Relations Act, including the removal of public interest tests in section 134,

the constitutional issues which create the process which is necessary for dispute finding and resolution.

There is the ability under the state act for applications to be made to vary awards under sections 23, 24 and 25 and the ability for the commission to arbitrate on such matters. However, that leaves the problem of what happens to employees who are covered by consent agreements who wish to make claims for an $8.00 increase.

We do not believe that it would be appropriate for disputes over the $8.00 to be dealt with under the consent agreement provisions as such an approach is a contradiction in terms and, in fact, our reading of section 59 - Application to Vary Agreement is such that it does not permit arbitration under consent agreements.

It appears that this approach has only been taken in the Federal Commission because of the particular jurisdictional constraints there.

So, it is out observation then, that the -

PRESIDENT: Would there be anything to stop a disaffected party making an application for an enterprise award on the issue?

MS BYRNES: Under the state or federal acts, Mr President?

PRESIDENT: Under, I am talking about under the state act. If there was concern about arbitrating an enterprise based arrangement, would either of the parties be prevented from making an application under section 23, 24 for the making of an enterprise award? Then it could be arbitrated.

MS BYRNES: Well, that certainly is a possibility, sir, and I have referred to that possibility, but then that leaves the problem where employees who are covered under a consent agreement do not have that avenue available to them. So the suggestion -

PRESIDENT: No, I am talking about parties to a - one of the parties to an agreement making an application under the award.

MS BYRNES: Well, varying the award -

PRESIDENT: I don't know quite whether or not the agreement would still override that new award, but there would be ways of bringing the matter on for arbitration at some stage or another, I would think.

MS BYRNES: It seems to us the most appropriate mechanism to deal with disputes over the $8.00 which would allow all parties whether covered by agreements or awards is that the

parties utilise the provisions of section 29 in a hearing of the dispute procedures.

COMMISSIONER GOZZI: Well, let's just be clear. Normally we would vary an award, or whatever. If this wasn't just an application to adopt the principles, it was to flow $8.00 into awards, it would also apply to agreements in the commission.

Now I thought you were heading down the track that where section 61 agreements are in place that how do you adjust those section 61 agreements. That's what I thought you were leading to, and I thought you were saying that in respect to section 61 agreements that we really shouldn't do anything, and I really thought, well if there was no agreement about how the $8.00 might apply in those section 61 agreements, then obviously -

MS BYRNES: I don't think it is possible for an $8.00 increase to be granted in relation to a section 61 agreement.

COMMISSIONER GOZZI: Well, yes, but if there was a subsequent dispute about agreement situations under section 61, say, then why couldn't one of the parties to that section 61 agreement simply make application for an enterprise award and seek by arbitration that $8.00?

I mean, that's patently available, as I would see it.

MS BYRNES: Mm. The question is for the bench to determine whether it wants to make a choice about a particular preferred mechanism under the Act to be used by all parties, or whether the parties can continue to utilise a varying number of options, statutory options, available to them under that legislation.

PRESIDENT: We can't prevent them from using the statutory options that are available.

MS BYRNES: I think it would be possible for the tribunal to include in its decision a recommendation or some guidance as to the process.

But I am not necessarily saying that that approach is better than leaving the Act as it is, I am merely making some observations about easier administration perhaps.

DEPUTY PRESIDENT ROBINSON: You're not going to tell us what sort of recommendation we should make in relation to dealing with those types of disputes?

MS BYRNES: Well, what I was leading to was, to have a consistent approach that any disputes arising over the application of the $8.00 safety net increase should be made under section 29 - A hearing of Disputes provisions.

DEPUTY PRESIDENT ROBINSON: Well, if we follow that through, and someone is covered by a section 61 agreement or indeed a section 55 agreement, the settlement of that dispute under section 29 could lead, would you agree, to the commission ordering that someone make an application for an award?

It gets a bit complex, I can see.

MS BYRNES: Having tested my observations out on the bench, it appears to me that the bench is preferring an option of allowing all the various mechanisms to be used, and I guess that was the guidance that I was looking for.

COMMISSIONER GOZZI: Section 29 with agreements would be a bit hard. In fact, anything, because the outcome of a section 29 can't have the effect of varying an award.

DEPUTY PRESIDENT ROBINSON: You could make an application for one.

COMMISSIONER GOZZI: You could make an application for an award which leads you back to an enterprise award, maybe.

MS BYRNES: It still leaves the question, however, as to what mechanism is available for an employee or a union which is under a consent agreement under section 55. And I guess in that situation they would have no option but to use the provisions of section 29.

PRESIDENT: It would be an interesting test to see how far it went, Ms Byrnes.

MS BYRNES: Yes.

COMMISSIONER GOZZI: I mean, in reality, and I know we are going round in some circles here, but in reality if a party to an industrial agreement couldn't resolve the issue, then I dare say they would probably seek to withdraw from that industrial agreement. They may then want to go back to the award that applied to them previously and make application to vary that award or, in fact, seek to make application for a new award which could be in fact an enterprise award where that industrial agreement previously applied.

I guess that would be the mechanism.

MS BYRNES: We will just finish off on that point. We just want to reiterate that the .... integrity in the section 61 provisions must be maintained, and the .... of both provisions should be recognised by this commission in its decision.

The other main concern of the mining industry, and this also reflects the sentiments expressed by Mr Abey, is its

opposition to the concept of minimum rates adjustment .... the supplementary payment.

The concept of a matrix of relativities between awards is inappropriate and contrary to the philosophy of enterprise focus and, in effect is a comparative wage justice concept.

It largely ignores workplace relevant skill levels and acquisitions, market forces and modern reward systems including individual employees .... and performance-related pay.

Certain parties to the national review of the wage fixing principles made submissions in relation to the inappropriateness of the safety net based on interrelated classification rates and supplementary payments in awards.

However, the bench maintained its commitment to the national framework of minimum rates awards - of minimum award rates approach.

As the mining industry in this state pays in excess of the national benchmark which were established in the 1989 national wage case decision it did not in general terms need to embark upon a minimum rates adjustment exercise.

There is therefore in mining industry awards no separate specification of minimum rates and supplementary payments.

Given the discussions that have taken place this morning about the scope of application of this increase to which awards, we would be, in the light of our situation, seeking from this bench a clear statement in its decision that awards in this category such as the mining industry awards would not qualify for the increase, and the need for that clarification arises from slight ambiguity in the federal decision to the effect that awards which have not yet had a minimum rates adjustment are not precluded from the safety net adjustment.

We have spoken about this already today.

Listening to the submissions of the TTLC this morning did not provide me with confidence. The union movement has a clear understanding of the intent of the national wage bench, and the statement that has been made by the TTLC today that all awards should constitute the safety net of awards.

That concerns us because in our reading of the national wage decision is that such increase cannot apply to our situation, but we are seeking a clear statement from the bench that it does not.

PRESIDENT: Can you tell us which awards you are specifically referring to?

MS BYRNES: Well, I'm talking about the mining industry in the state globally today but, in actual fact, all but three mining industries awards in this state are federal.

So the awards which I am specifically referring to then are the Pasminco-EZ Award, the Pasminco Rosebery Award and the TEMCO Award.

DEPUTY PRESIDENT ROBINSON: And none of those awards have got a base rate and supplementary payments in separate columns?

COMMISSIONER GOZZI: Mr Deputy President, they are enterprise awards.

MR ....: Are they?

MS BYRNES: They are enterprise awards and neither the parties nor the commission has perceived a need for that expression to have occurred.

PRESIDENT: Yes. Very good. Thank you, that helps.

MS BYRNES: One final point that needs to be made is to distinguish the federal circumstances from the Tasmanian system in relation to the role of the union.

Under the federal industrial legislation at present there is no capacity for non-union agreements. Consequently, the commission in its wage decision, the federal wage decision, stated that under the existing Industrial Relations Act a union with a membership at a company is entitled to be advised of any approach for negotiations by the company and is entitled to be involved in such negotiations.

We say that the commission is not able to make such a declaration concerning union involvement in its wage decision as to do so would be inconsistent with the spirit and intent of the amendments to the Industrial Relations Act which occurred early this year insofar as all parts of the act are concerned?

MS BYRNES: Well, all I can say, sir, is that the act now contains a certain philosophy and intent concerning the ability for enterprises to reach industrial arrangements without any involvement.

PRESIDENT: By the way, the particular division of the act in which the commission as constituted at the moment has no jurisdiction.

MS BYRNES: I make no comment about whether or not the bench wants to be precise about which section of the act it would be referring to. I making the point though that -

PRESIDENT: Well it can't - there's only one - one set of provisions by which the proposition you're putting forward could be effected and that's something outside the control of the Tasmanian Industrial Commission.

MS BYRNES: I think however that it does create the situation where this bench is not able to make a firm and general statement as the federal bench did about the necessity to involve unions because of that amendment to the act which arose ....

PRESIDENT: Well it may be a different situation in the federal jurisdiction - different statutory position.

MS BYRNES: Well, that's right. That's - that's where I'm making -

COMMISSIONER GOZZI: I mean you really want us to reaffirm I think what's already contained in the act. I mean under section 61 it's option whether or not the union is involved in an enterprise agreement. There are no public interest tests under section 61 and the wage fixing principles don't apply, and hence the relevance of the questions to Mr Pearce from the deputy president were quite - quite appropriate. I mean why would - why would the wage fixing principles necessarily apply to section 55?

But I mean the act itself makes it quite clear that employees have an option under section 61 and those options are not there in the terms of union involvement anyway as far as section - section 55 is concerned. However, there is no impediment - there is no difference between a section 55 agreement and a section 61 agreement in the context of the flexibilities available because under section 55 the parties can access through the wage fixing principles the enterprise bargaining principle, and it's up to the parties in that negotiation, which does include a union under that particular section, as to what the agenda items are, and those agenda items are not restricted. The enterprise bargaining principle was put into the award specifically in 1992 - in February '92 - to open up the system. Now I guess it's a bit unfortunate that there are people out in the community who are not recognising that between a section 61 and a section 55 agreement the essential difference is one statutorily requires a union to be involved and the other one doesn't - and that's about the only difference. Because the enterprise bargaining principle was put into the wage fixing principles to allow parties to come up with arrangements and - and wage increases not constrained by the wage fixing principle limitations - ....

PRESIDENT: And public interest tests.

COMMISSIONER GOZZI: And - and public - and the public interest test.

MS BYRNES: Yes, I take your point, sir.

COMMISSIONER GOZZI: So I don't know what you're on about quite honestly if I could be so bold as to say that, because there are no - as I say - no flexibility inhibitions or limitations there at all. If you boil it right down to the bottom line, one requires the involvement of the union and the other one doesn't. And of course section 36 considerations apply to section 55 industrial agreements.

But the enterprise bargaining principle opened up the system as far back as February '92. Just a pity more people are not using it.

MS BYRNES: Yes, the point - the simple point that I'm making, sir, is that this bench cannot make an unfettered statement in the way that the national wage bench did about the need to involve unions because there is a legislative difference between the two jurisdictions.

COMMISSIONER GOZZI: Well we - we can't make a decision that's inconsistent with the act.

MS BYRNES: That's right.

COMMISSIONER GOZZI: I don't think we'd want to do that.

MS BYRNES: And other than just to emphasise the fact that access to any arbitrated increase must be on an award-by-award basis consistent with the decision of the national wage bench, unless there are any further questions that concludes my submission.

COMMISSIONER GOZZI: I guess the question I have is, do you accept, Ms Byrnes that that is about the only difference. I mean section 36, the public interest section, and the - the need to have unions involved in section 55 that that essentially is about the only difference a section 55 agreement and a section 61 agreement.

MS BYRNES: My understanding, sir, is that the wage fixing principles do not apply for a section 61 agreement. Rather there are the stated minimum conditions of employment.

COMMISSIONER GOZZI: Yes, but - but what about the operation of the enterprise bargaining principle which went into the wage fixing principles of 1980 - in 1992 - don't you see that that provides the opportunity - the flexibility opportunities -

MS BYRNES: Yes.

COMMISSIONER GOZZI: - where the - where the wage outcomes are not restricted to the limitations imposed by the wage fixing principles.

MS BYRNES: Yes.

COMMISSIONER GOZZI: So what - what flexibility difficulties do you see are inherent in the system as it is?

MS BYRNES: I'm not asserting that there were. My purpose in raising section 61 today was that the mining industry has concerns about the fact that it is a section of the act which is not supported by the trade union movement in this state and all I was looking for was recognition from the bench in its decision is that it is a mechanism which is available to be used by the parties for the registration of enterprise bargaining arrangements.

DEPUTY PRESIDENT ROBINSON: What about other sections in the act like private arbitrations - they're available - should we say that too? Interpretations - section 43 - they can use those. Should we say that too?

MS BYRNES: Specifically in relation to the registration of enterprise bargaining arrangements which is of primary concern to this wage decision, then the state of mechanism which will go into the principles is section 55. Now I don't think that should detract from the fact that section 61 is available to parties and that recognition should be given to that fact.

COMMISSIONER GOZZI: Well it's certainly given - the act certainly gives recognition to it and consultants employed give recognition to it. You ask to give recognition to it as well in the decision to say that this is available?

MS BYRNES: Yes.

PRESIDENT: Yes, thank you, Ms Byrnes.

MR BACON: Are we exhausted?

PRESIDENT: Yes, Mr Bacon. I'm sorry, we're half an hour late.

MR BACON: I suppose I'll live through explaining that to someone, Mr President. I don't think actually there is a great deal that we would want to respond to. There are some specific matters and before we do that there is another typographical - and in view of the fact that in Tasmania now you can excuse anything on the basis that it's a typographical error - on the bottom of page 4 of our amended principles which became part of the application this morning, and I assume others had already fixed it on the basis that it

doesn't make sense, somehow or other the last few words have jumped from another - the following paragraph. It should read - .... - if I read out the last three lines: In excess of the minimum rates classification rate and supplementary payment prescribed in accordance with the October 1989 state wage case decision is a prerequisite to it being applied in any award. I think the way it reads at the moment does not make any sense at all.

PRESIDENT: It's picked up from the following paragraph.

MR BACON: It's picked up from the following paragraph.

MR ABEY: What are the words - it's prerequisite -

MR BACON: Well if you have a look at the -

PRESIDENT: It's straight - straight out of the federal decision.

MR BACON: Yes, precisely. I assume seeing that no-one had raised it, Mr President, everyone must have realised what had happened.

PRESIDENT: Well I hadn't got to reading all the detail.

MR BACON: Just a few matters that we would wish to respond to - the first one, the question raised by Mr Abey in relation to juniors and apprentices, he argued that in fact the full bench of the Australian Commission hadn't taken up - and I suppose it could be described as a suggestion from the ACTU - that they do so in their supplementary decision, we would argue conversely that in fact the decision does not prescribe juniors and apprentices from benefiting if they are in a position to do so from this increase when it is payable, if it is payable, and we certainly would not want to see juniors and apprentices specifically excluded.

Think over, we should say that in fact this application today is for this commission to adopt a new set of wage fixation principles, it is not an application by us for $8.00 to be put in every award rate in the state immediately, and I think that some of the submissions, particularly this afternoon, would have been - or appear to have been based on an application from us for the $8.00 to immediately be put in each award rate - it's clearly not what the application seeks to do and we do anticipate that in line with the federal decision if our proposed principles are adopted that it would then be a matter for individual parties to awards to make application for the arbitrated safety net adjustment, as it's termed, to be put into the specific award and many of the issues which have been raised now would be more appropriately raised.

And in fact I think specifically the submissions from Mr Rice in relation to the plight of many farmers in this state, which certainly we do recognise and have sympathy for them, though we doubt that all are quite suffering as much as Mr Rice suggested, would really be more appropriately done as the Farmer Federation nationally and the Farmers and Graziers in Tasmania have got very used to doing over very many years now, arguing that they do not have the capacity to pay when the award is actually sought to be varied.

And I should too, respond to suggestions from Mines and Metals that the union movement has disappointed the mining companies in the state by not being great supporters of section 61 and I must advise the advocate for Mines and Metals that I hope they're not holding her breath because if they are they will continue to be disappointed because we will not be saying to anyone or particularly doing anything that would seek to give any credibility whatsoever to section 61 and associated sections of the act.

We do not believe that that is a proper scene - or what is happening there are the proper examples of enterprise bargaining. We think in fact, as indeed the enterprise commissioner himself recently said publicly, that it is more in line with what the full bench of the Australian Commission was talking about, when it was talking about narrow agenda - agendas and negative cost cutting rather than being genuine exercise in - in enterprise bargaining.

In answer to Commissioner Gozzi's question about what is different between that and section 55 agreements, I suppose we could also say, Commissioner Gozzi, that at least on the evidence we have, and bearing in mind that we are not allowed to have copies of these agreements as I think you are not allowed to have copies of the agreements, that another feature of them is that they appear to - the ones we've seen at least - have the capacity to cut wages as well as to look at other provisions in the award. But we have seen none which could be described as being proper enterprise agreements in any sense of the word.

So we will not be promoting that and we would certainly think it was most odd if this commission was to say anything in its decision about a part of the act to which itself has no capacity to - to take part in proceedings under that act. In fact it is prevented from doing so and it would, as I said, be rather odd if registered parties with this commission, which we are, and which mines and metals are, were to be running around saying it is much better to go somewhere where registered parties are not recognised and in fact as far as employee organisations who are registered organisations with this commission have been prevented from appearing to put our views or to represent our members.

PRESIDENT: It wouldn't be fair to say though broadly that the employee organisations were not recognised under section 61A and ongoing - unions still have a -

MR BACON: Well I think -

PRESIDENT: - have a role if - if an enterprise arrangement can be entered into.

MR BACON: Well I think it does envisage enterprise agreements under that section between unions and employers in one provision -

PRESIDENT: Yes.

MR BACON: - but I can assure the bench and anyone else who wants to listen that if I've got anything to do with it there won't be any unions trotting off there with agreements.

PRESIDENT: Oh, I was only concerned about your statement that unions were not recognised.

MR BACON: Well, we've had severe difficulties being recognised -

PRESIDENT: That's once the agreement's been reached Mr Bacon.

MR BACON: at any of the hearings we've tried to go to, Mr President. And mines and metals might care to note that we have taken action in the Supreme Court about proceedings under that section and we certainly intend to pursue those to their conclusion and we are hopeful of getting an outcome which does at least bring attention to some of the more objectionable features of all that.

Of course there are registered parties, some of whom are present today, who like very much to come along here and put argument about what the principles should say and what unions and employees should be allowed to do, but when they get the opportunity they don't mind running off to Enterprise Commissioner Johnson with a different sort of agreement which doesn't of course have to go through any of the hurdles that people here, they say, are meant to go through, but do have the outcome of cutting wages. So they seem to me to want to have two bob that way but the when it suits them come here and line the unions up for which a good dose of what they think we should be doing.

COMMISSIONER GOZZI: But you wouldn't disagree, Mr Bacon, that section 55 agreements negotiated in accordance with the enterprise bargaining principle providing limitations on agenda. I mean the outcomes I agree from what we've heard between section 55 and 61 have been different but the agendas

are available equally under that enterprise bargaining principles under section 61.

MR BACON: Well certainly, Mr Commissioner, we don't agree with the falsehead which is - falsehood - which was put around by some employer organisations that unions are the sole obstacle to great leaps forward in efficiency and productivity and I think it is quite true that we have said consistently and in fact it has been us the loudest probably, arguing in favour of a broad agenda to be the basis of enterprise bargaining and we certainly support that. I agree with the comments you've made. I mean we've also pointed publicly to the flexibility clauses which are in many awards as also being opportunities for non unionists or work places which do not have union members to make changes to award arrangements within certain boundaries of course which would allow for flexibility. But we have been - I mean if - if mines and metals are waiting for us to come out in strong support of section 61 and so on, then they'll be waiting a long time. But these I think equally will be waiting a long time for employers to stop whingeing about unions being an obstacle and actually doing something about the options that are available to them, including in non union areas and the flexibility clauses in fact have been put in most awards and while it was a matter of some heartache to some unions agreeing to flexibility clauses and there was quite a bit of opposition within the union movement to some of the flexibility clauses that have been agreed to, in fact there's been deafening silence as far as employers actually wanting to do anything about taking up the opportunity that was there for them.

COMMISSIONER GOZZI: I mean just on this particular point, because it is -

MR BACON: I'm not really anxious to get into a big argument.

COMMISSIONER GOZZI: - it is - it is one that has caused me some concern - well, it's not concern, but it made me think that people perhaps don't fully understand what's available - often people are talking about annualised salaries only being able to be negotiated under section 61.

MR BACON: Oh, well that of course is nonsense.

COMMISSIONER GOZZI: The fact is annualised - yes - annualised salaries are in fact already in an enterprise award and there are other moves afoot under section 55 look at those very questions.

MR BACON: Precisely and that's only one example and I'm certain there are many others which - and I think it was one of the things actually that Enterprise Commissioner Bevan Johnson drew attention to that in fact a number of these sorts of innovations that have been brought in in agreements

involving unions on the workplace level, a number of those innovations were being completely ignored in his jurisdiction and people were only - employers were only concentrating on negative cost cutting, so I think your point is well made that there is of course adequate flexibility in - in this commission and there are provisions in the act which allow - preceding the recent amendments - which did allow that to happen.

Mr President, members of the bench, I don't wish prolong these hearings any longer. If, of course, there are any questions that you would like to ask me I would be pleased to answer them otherwise we would leave the application there and await your decision.

PRESIDENT: Yes. Very good. Well, thank you very much, Mr Bacon. Thank you all for your attendance and contributions. I'm sorry - you're to go, Mr Cooper.

MR COOPER: Thank you very much.

PRESIDENT: I do apologise.

MR COOPER: Mr President, with respects to the submissions that have been made I just want to make a couple of brief comments I think for the benefit of the commission and they go to the subject matters that have been raised by the employer applicants that have appeared today before you.

PRESIDENT: Yes.

MR COOPER: One thing is in respect to TCCI.1, that was again from - as Mr Abey said - an industry commission, impediments to regional industry adjustment. That report is only a draft report and I think the commission should place it no higher than that, that it is only a draft report, but if people are to quote from it, quite clearly that report also states in chapter 2 that income person in Tasmania is on average 15,412 which is quite clearly the lowest by a long shot in Australia.

Now I don't intend to put documents to the commission, but the report is a draft report and to quote one page from the draft report that is some two or three hundred pages in length, needs to be considered in light of the document that has been tendered.

In respect to the question that was raised about relativities, the $8.00 question applies to whom and to which classification. Quite rightly Mr Rice raised that in the context that he was unsure who the $8.00 would apply to in respect to whether it should apply to the 100 per cent classification and then be reduced accordingly in respect to a relativity adjustment, therefore entry level would mean that someone at an entry level at a 78 per cent relativity would

receive 78 per cent of $8.00. I don't think, on my reading of the full bench decision, that that was what was intended. However, it does raise an interesting question that the bench will have to apply itself to.

I would argue, from my reading of the principles, that it was intended that there would be a flat amount increase of $8.00 which would apply to all classifications. That's what I would read in respect to that decision. I think that clears that point up.

In respect to section 61 which has been discussed at great length. I think I tend to agree with a lot of -

PRESIDENT: 61, by the way, just for the record, is private arbitrations. 61A -

MR COOPER: 61A, sorry.

PRESIDENT: - and following on are the sections dealing with enterprise agreements.

MR COOPER: That's quite right. Sorry, Mr President. In respect to Part IVA - Enterprise Agreements, Division 1, part 64A. I think that section of the act, I think it's quite remarkable to ask for the bench to note that section of the act when the principles that the bench is making wouldn't seem to apply.

Now what I think the bench should be mindful of is that section 61F of the act does state minimum conditions of employment that would apply, so in respect to any decision that comes out of this bench in view of the new principle that the Labor Council is asking to be included, I think that the principle would have to be argued on application, but it would have some impact on section 61F which quite clearly states:

> Conditions of employment fixed by an enterprise agreement in respect of rates of wages must not be less than -

- and then it does list a number of provisions in which it must be less than, and it does say, in (a):

> (a) in the case of an adult, the hourly rate for the lowest paid classification specified in an award or industrial agreement -

- therefore in considering that section of the act, any full bench decision in respect to principles would obviously mean if an application was successful the principles were included. An application to vary an award was successful, then the minimum rate that's contained in that award would obviously impact on the minimum rate that is contained in an enterprise

agreement. In that respect I think that's the only consideration the bench should need to make in respect to section 60 - in Part IVA of the act and in particular section 61F which does go on to deal with rates of wages for juniors and minimum conditions that are prescribed therein which is a very limited public interest test that has to be applied under that section of the act.

So in context the bench should only need to consider that section of the act in respect to a movement as it relates to a minimum rate.

I think Mr Bacon has quite clearly too covered Mr Rice's comments in respect to the plight of the rural industry. That is quite clearly contained at page 9 of TTLC.1, an economic incapacity to argue case on the application of any respondent union or any party in respect to a variation to an award and I think if argument is to be made then it should be made at that stage, possibly not so much today. What we are trying to do is put in a new set of principles.

There were a number of other things, Mr President members of the bench, that I did want to touch on, but in light of Mr Bacon's comments that we are trying to deal with an introduction of a new set of principles, they're probably not relevant, but in respect to the mining industry I think it is clearly necessary for us to state that although the views of Mines and Metals are somewhat at odds to the views that were being shared some time ago when they were knocking on our doors as representative of employees to assist them in dispute resolution and to assist them in reaching agreement with the employees that the employer was not able to reach agreement with, that it's remarkable how the wheel does turn and now they are suggesting to the commission that this decision should be considered in light of the increasing relevance of employer/employee negotiations and how they feel sometimes frustrated by the involvement of unions.

In the mining industry in Tasmania where we are involved, we are involved because our members want us to be and until that changes, Mr President members of the bench, we will continue to be involved and I believe that my union in particular has played a very significant role in helping the mining industry in Tasmania remain competitive in the situation that it finds itself in with low commodity prices. We do see that mines that are facing closure have been able to achieve, through the principles of the federal commission and the state commission, 58 per cent increases in productivity where they've also down sized, so I think it needs to be considered in context of what is available to the parties under the existing principles, and that is the February principles of this commission - February 1992 - which was the October 1991 principles of the federal commission, and in light of those comments, I have nothing further to say, subject to any questions from the bench.

PRESIDENT: Yes. Thank you very much, Mr Cooper. No other submissions? Well thank you very much for your contributions. The matter is concluded and a decision will be handed down in due course.

HEARING CONCLUDED