TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. **8413 of 1999**

IN THE MATTER OF an application by the Tasmanian Trades and Labor Council to vary the awards of the Tasmanian Industrial Commission to reflect the decision of the Australian Industrial Relations Commission of April 1999, contained in Print R1999 - Safety Net Review - and to review the Wage Fixing Principles

FULL BENCH:
DEPUTY PRESIDENT JOHNSON
COMMISSIONER WATLING
COMMISSIONER IMLACH

HOBART, 30 June 1999

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING COMMENCED 9.35am

DEPUTY PRESIDENT: I'll take the appearances please for the applicant.

MS L. FITZGERALD: If the commission please, LYNNE FITZGERALD appearing for the Tasmanian Trades and Labor Council.

MS P. SHELLEY: If the commission pleases, PAULINE SHELLEY appearing on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmanian Branch.

DEPUTY PRESIDENT: Mr Willingham.

MR C. WILLINGHAM: If the commission pleases, CLIVE WILLINGHAM. I appear for the Minister for Justice and Industrial Relations pursuant to section 27 of the Act and also for the Minister administering the Tasmanian State Service Act.

DEPUTY PRESIDENT: Mr Edwards.

MR T.J. EDWARDS: If it please the commission, EDWARDS T.J. and appearing with me **BROWN R.L**. We appear for the Tasmanian Chamber of Commerce and Industry, the National Meat Association and the Registered Clubs of Tasmania Co-operative Society Limited.

DEPUTY PRESIDENT: Thank you, Mr Edwards. Mr Fitzgerald, you were about to rise.

MR W.J. FITZGERALD: Yes, thank you, sir, I wasn't sure who was next. I appear on behalf of Australian Mines and Metals Association Incorporated - FITZGERALD W.J.

DEPUTY PRESIDENT: Mr Rice.

MR K.J. RICE: If it please the commission, RICE K.J. I appear on behalf of the Tasmanian Farmers and Graziers Employers Association.

DEPUTY PRESIDENT: Mr Long.

MR J. LONG: If the commission pleases, JEFF LONG. I appear on behalf of the CFMEU Tasmanian Branch.

DEPUTY PRESIDENT: Mr Paterson.

MR I. PATERSON: If the commission pleases, IAN PATERSON appearing for the Australian Municipal, Administrative, Clerical and Services Union.

DEPUTY PRESIDENT: Mr Brown.

MR C. BROWN: If the commission pleases, C. BROWN appearing for the Health Services Union of Australia, Tasmania No. 1 Branch.

DEPUTY PRESIDENT: Mr Flanagan.

MR R. FLANAGAN: I'm not entering an appearance.

DEPUTY PRESIDENT: Are there any other appearances?

MR G. COOPER: If the commission pleases, I appear on behalf of the AFMEPKIU, COOPER G.

DEPUTY PRESIDENT: Thank you, Mr Cooper. Any other appearances?

MR D. ELLIOTT: DAVID ELLIOTT appearing for the Australian Education Union, Tasmanian Branch.

DEPUTY PRESIDENT: Other appearances.

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

DEPUTY PRESIDENT: Thank you, Mr Noonan.

We will open these proceedings with a procedural statement. We make the observation that every member of this tribunal currently has a full case load and hearing program. Not all of our duties appear on the cause list, for example, the reviews of parliamentary superannuation and Legislative Council electorate allowances.

We add also that Deputy President King commences leave today pending his retirement. The impact of these circumstances reflects in the fact that yesterday we were obliged to list two full bench appeal hearings for dates in mid-August.

For these reasons, our objective is to conclude these proceedings by the end of Tuesday next at the latest. To facilitate our achievement of that objective in a manner that will ensure that all parties have reasonable time in which to present their submissions, we propose to sit until 8.00pm each hearing day, including today, unless of course the parties can satisfy us that there is no need for us to take such action.

That said, perhaps I should ask if there are any other preliminary matters. Mr Edwards?

MR EDWARDS: Only if I could make a brief comment about the statement of the bench relating to sitting till 8.00pm on hearing days. That doesn't ordinarily occasion me any difficulty but I do flag to the bench that it will occasion me a difficulty on Monday of next week. My

wife will be away for the full week and I'm looking after three children which will necessitate me not being here till 8.00pm. If it please the commission.

DEPUTY PRESIDENT: Well, perhaps we can take account of that at the time closer to the day, Mr Edwards, but we will bear it in mind.

MR EDWARDS: Thank you, deputy president.

DEPUTY PRESIDENT: Ms Fitzgerald.

MS FITZGERALD: In terms of that matter -

DEPUTY PRESIDENT: I'm sorry?

MS FITZGERALD: In terms of this matter - in terms of sitting times - is that -

DEPUTY PRESIDENT: No, I'm inviting you to commence your submissions-in-chief.

MS FITZGERALD: Thank you very much. Before I commence I would like to hand up an exhibit which includes - a series of exhibits, so rather than hand them up one by one, I want to hand them up in a booklet.

DEPUTY PRESIDENT: Do you want the exhibits marked separately or just simply as a bundle?

MS FITZGERALD: I have marked them separately and I'll certainly refer to them in my submission. They're marked there in tabs A through to F.

DEPUTY PRESIDENT: Yes, thank you.

MS FITZGERALD: Thank you very much. The Tasmanian Trades and Labor Council has, at tab 1, made application to vary the awards of the industrial commission to reflect the decision of the AIRC Safety Net Review and I would seek leave of the commission and foreshadow that I seek to amend the application consistent with my submission.

I foreshadow that my amendment will be to seek to vary all wage rates in private sector minimum rates and paid rates awards by the arbitrated safety net adjustment from the beginning of the first full pay period to commence on or after 14 July and to amend the Wage Fixing Principles accordingly.

DEPUTY PRESIDENT: Yes, thank you, Ms Fitzgerald.

MS FITZGERALD: At tab 2 of the exhibit there is the ACTU claim.

The ACTU Living Wage claim sought:

Increases of $26.60 per week for all award rates of pay up to $527.80 per week [that was skill level 7] *in the Metal Industry and 5% for all award rates of pay above that level, subject to absorption in the normal way.*

The ACTU argued that:

The claims if granted would raise the Federal Minimum Wage from $373.40 to $400.00 per week (from $8.83 to $10.53 per hour) for ordinary hours of work; and

Commensurate adjustment of allowances which related to work or conditions which have not changed and service increments, consistent with the Commission's approach in recent safety net decisions.

The variations claimed [were] *sought to have effect from April 1999 to operate for twelve months.*

The commission received submissions supporting and -

DEPUTY PRESIDENT: Excuse me. I'm sorry, before you go to the merits of the matter, I should test the amendment that you seek to make to the application.

MS FITZGERALD: Right.

DEPUTY PRESIDENT: Mr Edwards, do you understand the amendment as described and do you have any objection to it?

MR EDWARDS: I certainly understand it in part, deputy president, inasmuch as I understand the amendment to now require that the application is no longer to vary all awards of the Tasmanian Industrial Commission, but rather, only to vary wage rates in private sector minimum and paid rates awards by amounts consistent with the Safety Net Review decision of the Australian Industrial Relations Commission in Print R1999. I have no objection to that part of the application to amend by the TTLC.

In respect of the second aspect of the TTLC statement about their intention to seek leave to amend, they have, as I understand it, changed their application which read: *to review the Wage Fixing Principles*, to now read: *to amend Wage Fixing Principles accordingly*, to the extent that that doesn't seek a fundamental review of the Wage Fixing Principles and we would object to that proposed change in the application.

The application as it's framed is clearly designed to show that a review of the Wage Fixing Principles was to take place as part and parcel of this application and we would submit that that is entirely consistent

with a State Wage Case-type proceeding where there is a balancing of not only applications for wage claims but also the conditions which might attach to future wage claims and matters being progressed before the commission.

I would be prepared to make further submissions on that later but I would firstly find out whether or not my understanding of Ms Fitzgerald's amendment is correct.

DEPUTY PRESIDENT: Yes, thank you, Mr Edwards. Ms Fitzgerald?

MS FITZGERALD: As I've said, we seek change to the Wage Fixing Principles - particular aspects of the Wage Fixing Principles - and if you refer to tab F, I have sought to change or to amend the Wage Fixing Principles as it applies to the safety net increase, the operative date, allowances, some minor changes at structural efficiency and to also reflect a matter that arose or is a part of the decision of the federal industrial commission which is a change to the Economic Incapacity, Principle No. 17. So I consider that that in fact is a review - a review and seeking of amendment to take account of the decision of the federal commission.

DEPUTY PRESIDENT: Would it be the intention of your amendment then, and this addresses the point that I understand Mr Edwards makes, to object if the employers wish to bring other principles into the review?

MS FITZGERALD: Yes, it would be.

DEPUTY PRESIDENT: So to the extent that your amendment reduces the scope of the application, as originally made, that's the intention of your organisation?

MS FITZGERALD: It is but I wouldn't want it to be inferred that the wording of my application necessarily infers a broad review. A review would occur to take account of the decision of the federal commission and I think that what I am attempting to do is in fact consistent with my application. In seeking to amend my application I've rather been more explicit than attempting to narrow what in fact I was suggesting would occur.

DEPUTY PRESIDENT: Yes. Thank you, Ms Fitzgerald. Mr Edwards, I should seek the observations of others before I come back to you, I think.

MR EDWARDS: Thank you, deputy president.

DEPUTY PRESIDENT: Mr Fitzgerald, do you have any observations to make in this regard?

MR FITZGERALD: I have no observations, thank you, Mr Deputy President.

DEPUTY PRESIDENT: Mr Rice?

MR RICE: Not at this particular time, other than that we do support the submissions made by the TCCI, Mr Deputy President.

DEPUTY PRESIDENT: Mr Willingham?

MR WILLINGHAM: Thank you, Mr Deputy President. I don't have any difficulty with the mooted amendments that Ms Fitzgerald has put to you and I'd like to make a couple of comments in respect of them.

Firstly, I fully understand, and it must be fairly obvious, I think, to most people why the amendment relating to the awards which the council seeks to vary have been proposed, and that is, as Mr Abey reminded us this morning, that in the vast majority of the public sector the adjustments that are currently before - the application before the bench does have immediate and direct effect upon the public sector awards.

The second point is that the wording of the application that the council has submitted is, as I recall it, identical with the wording of applications that have been made over the last decade and that includes, if my recollection serves me correctly, are the words 'seeking a review of the Wage Fixing Principles', and it has always been my understanding, Mr Deputy President and members of the bench, that meant review in the context of the case to which the applicants were seeking to have flowed into the state jurisdiction, that is, you must review the Wage Fixing Principles of this commission in light of the decision that has been made by the National Wage Case and it is clear that that is necessary. And indeed as Ms Fitzgerald has pointed out, it's necessary on this occasion because one of the amendments that the council proposes in relation to this state's Wage Fixing Principles is in fact an amendment to the Economic Incapacity principle, and quite properly, in the government's view, that should be incorporated within the Tasmanian principles.

So I agree with Ms Fitzgerald entirely, to review the principles has to be seen in the broad context and in its historical context. It does not, in my view, connote that there must be some expansive start from point 1 - review of the Wage Fixing Principles. It may mean that, it may mean nothing more than Ms Fitzgerald has put, and which she is fully entitled to put, as the applicant. If the commission pleases.

DEPUTY PRESIDENT: Thank you, Mr Willingham. Mr Edwards?

MR EDWARDS: Thank you, deputy president. With respect to my friend, Mr Willingham, I can't agree with the submission that he has placed before you. Certainly I agree with that aspect where he

indicates that the form of words used in the TTLC application is largely consistent with that that has been used by the TTLC in the past for the seeking of a State Wage Case. There can be no doubt about that.

But I think the facts of past State Wage Cases tend to speak for themselves, and that is, that the reviews of the principles at past State Wage Case times has not been limited simply to principles that are affected by the application to amend the awards in respect of wage rates. It's been much more fundamental than that.

And I instance for example that that is commission has never sat for the sole purpose of reviewing Wage Fixing Principles. They have alway been developed in the context of a total State Wage Case application and the review of the principles has been a fundamental thing and it's been something that's able to be reviewed across the board.

We are strongly of the view that it is not only appropriate but necessary for the Statement of Principles to be reviewed at the same time as the commission consider an application for increases in wages in state awards. In this context we remind the bench that the Statement of Principles have been developed by the parties to successive State Wage Cases as part of a packaged approach to those cases in the context of compromise outcomes that have been designed to balance the aspirations of the union movement and their members and the position of employers so as to facilitate agreement on the respective State Wage Cases.

It is now relevant to record that that same level of consent does not now exist and in our strongest possible submission, the conditions that enabled us to previously consent to the Statement of Principles also no longer exists.

Against this position we contend that it is incumbent for the Tasmanian Industrial Commission to consider in the absence of the previous substantial consent position what Statement of Principles should exist into the future to underpin whatever wage increases, if any, it may be inclined to grant in the context of this application.

The increases available by way of safety net adjustments have been determined in an environment of a system of substantial wage restraint through the agency of the Statement of Principles, both federal and state and which are designed to regulate the industrial relations environment.

There are many aspects of the existing package of principles that are not underpinned through any legislative support and have been included by the parties as a commonsense approach to the legislative differences that exist between the state and the federal Acts.

Much of the direction of the federal commission principles have been driven by the specific legislation within which the federal commission

are required to operate within and are inappropriate for simple translation to the Tasmanian situation.

The commission, in our view, would be neglecting its obligations to develop a set of Wage Fixing Principles to guide the parties in respect to applications to increase labour costs or in their enterprise bargaining exercise as a result of this State Wage Case.

The question of the purpose behind and the utility of the Statement of Principles and whether they should be maintained was addressed in the April 1998 Safety Net Review decision of the federal commission in Q1998 at page 54 of that decision. As a result of the ACTU proposal that the statement of principles be abandoned:

> *The Joint Governments* [of which Tasmania was a part] *submitted that a Statement of Principles should be maintained because:*
>
> *"the principles play a vitally important role in providing guidance to the parties and assist in shaping the parties' expectations in a wages system that continues to evolve;*
>
> *principles assist in providing consistency and avoiding uncertainty in the exercise of the Commission's discretion in relation to its dispute prevention and settlement powers;*
>
> *it is of value to draw together some legislative matters and codify conventions and past decisions for ease of reference in relation to the matters dealt with by the principles;*
>
> *it is worthwhile, for equity reasons, to specify clearly in a formalised set of principles that there is access to such avenues as past wage case decisions, work value applications and applications regarding equal remuneration without discrimination based on sex; and*
>
> *in the absence of such principles there is potential for uncertainty and instability in wage fixation."*

In their decision, the bench decided - and I quote:

> *We have decided to retain the Statement of Principles. Principles promote consistency and tend to reduce uncertainty in the exercise of the Commission's powers. Because of this, principles can enhance the stability of the industrial relations system and contribute to more equitable outcomes. Nevertheless the ACTU's submissions are not without merit and we have taken them into account. Although we will not abandon the concept of a formalised set of principles, we intend to simplify the current one.*

In our view the principles of the Tasmanian Industrial Commission need to be reviewed in the context of contemporary developments in industrial relations and wage fixing and in light particularly of the lack of consent that now exists as a result of the parties being unable to reach a package agreement to this application for a State Wage Case increase.

And for those reasons we would oppose the application of the TTLC to amend its application to the extent that it seeks to limit our capacity to put forward a full review of the Wage Fixing Principles to this commission.

I can indicate that TCCI have developed a full-blown submission in respect of a review of the Wage Fixing Principles and we have a significant proposition that we would like to advance to the full bench in that regard and we would not be seeking any additional delay in order to present those submissions to the commission. We are in a position to proceed with it at the appropriate time during the course of these submissions. If it please the commission.

DEPUTY PRESIDENT: Thank you, Mr Edwards. Ms Fitzgerald, do you want the last word on the point?

MS FITZGERALD: Thank you, very much. I would like to just reiterate and I agree with Mr Edwards inasmuch as the context in which the Wage Fixing Principles have been extensively reviewed and changed in the past and it has been when there's been consent and in the context of a National Wage Case decision. I don't - there's not been an argument that the Tasmanian principles should be substantially different from the principles of the federal jurisdiction and Mr Edwards clearly doesn't have an application before you to substantially review or amend or change the current Wage Fixing Principles.

DEPUTY PRESIDENT: The parties have raised, through the amendment, a very substantial point which we think we should take a brief amount of time to consider the arguments. For that purpose we will adjourn these proceedings. We ask the parties not to depart from the precincts of the hearing room. We do not intend to be long. These proceedings are adjourned.

INTO CONFERENCE 10.00am

HEARING RESUMED 10.30am

DEPUTY PRESIDENT: We are minded to note that the current proceedings concern a TTLC application rather than an employer application.

Having considered the submissions we do not see that what Ms Fitzgerald called an amendment is in fact an amendment of the

application itself, rather, it seems to us, to be nothing more than an explanation as to the scope of the application as lodged.

That application does not go to a full review of the principles but only to a review to the extent necessary to give effect to the substantive application, that is, a review of all private sector awards to reflect the federal safety net adjustment decision.

In the circumstances, we cannot see how the respondent employers can move to make the application something that it is clearly not since the amendment, if it is such, is really, in our terms, an explanation it is arguable that there is no need for us to make a ruling at all. However, if it should be necessary for us to make a ruling then we grant leave to amend the application for purposes of clarification and in doing so we reject the grounds relied on by the employer respondents in opposition.

That concludes our ruling on the amendment or explanation, whatever it might be. Ms Fitzgerald?

MS FITZGERALD: Thank you. Can I now proceed?

DEPUTY PRESIDENT: Yes.

MS FITZGERALD: Thank you. I had indicated what the ACTU claim before the federal commission was. The commission received submissions supporting and opposing the ACTU's claim. Those generally opposing the claim included the Australian Chamber of Commerce and Industry, the National Farmers' Federation and the Joint Governments which comprised the governments: Commonwealth Government, South Australia, Victoria, Western Australia, the ACT and the Northern Territory.

Submissions of support were made by the governments of New South Wales, Queensland and Tasmania, the Australian Council of Social Service and the Australian Catholic Commission for Industrial Relations.

The submissions put to the federal commission focused on the effect of an increase in safety net award wages on the economy generally with specific attention directed to employment, inflation and productivity.

The submissions of the Joint Governments and employer associations concerned continuing international uncertainty and a deterioration in key areas such as investment, growth and export performance which was said to have become evident since the 1998 hearing. These submissions emphasised the continuing high levels of unemployment, urged that significant weight be given to the employment effects of a safety net adjustment and drew attention to particular sectoral performances.

The Australian Chamber of Commerce and Industry particularly submitted that granting the ACTU claim would harm existing jobs and deny the unemployed an opportunity to obtain employment.

The Retail Motor Industry reported slow business performance with survey expectations showing no prospect of improvement.

The Joint Governments submitted that the ACTU claim was unsustainable and would jeopardise the jobs of the most vulnerable in our society.

The federal commission considered the economic effects of the ACTU's claim at two broad levels. The effects in aggregate terms on wages growth, inflation, employment and productivity, and, the effects at the sectoral or enterprise level recognising that the application of safety net adjustments will vary reflecting the different incidents of enterprise bargaining and overaward payments between and within sectors of the economy and the impact of wage increases on employment levels of employees benefiting from safety net adjustments.

The federal commission noted that the likely aggregate cost of a safety net adjustment involved two elements; direct costs and indirect costs.

In submissions to the federal commission, the ACTU, Joint Governments and the Australian Chamber of Commerce and Industry relied on estimates of the direct cost of the ACTU claim based on methodologies and data put in the 1997 and the 1998 Living Wage cases.

The ACTU provided an economy-wide aggregate cost estimate of the impact of its wage claim of a 0.3 to 0.8 per cent gross addition to average weekly ordinary time earnings.

The Joint Governments relied on the estimate of the aggregate cost impact of its proposal put to the 1998 proceedings and estimated that an $8 increase in award rates, subject to absorption and with a cut off at the C10 trades classification level in the Metal Industry Award would increase AWOTE by around 0.1 per cent.

They estimated that the ACTU claim would directly increase AWOTE growth by 0.9 to 1.2 per cent for the economy as a whole and 0.9 to 1.3 in the private sector. And that's on page 19 of the commission's decision.

The ACCI provided estimates of the cost of the ACTU claim based on data obtained from a survey of its members conducted in late 1996. It estimated that the ACTU claim would directly increase average wages of those surveyed firms by 3.7 per cent.

The federal commission reported that - and this is page 19:

Each of the measures has been subject to consideration in the last two Living Wage decisions. . . . None of them directly measures the likely cost of the ACTU claim. . . . Each method involves assumptions. . . . Each method is criticised by the other parties.

The federal commission concluded that:

Given the absence of a direct cost measure, a degree of judgment is required and it would be unwise to act on a specific estimate advanced, although each of the estimates provides guidance.

A number of submissions to the ACTU's Living Wage case addressed the potential indirect costs of the claim.

The Joint Governments provided an assessment of enterprise agreements which suggested some limited potential for safety net increases to lead to higher agreement rates and inflation. The Retail Motor Industry provided survey evidence suggesting a majority of its respondents passed on safety net increases, in whole or in part, to some employees in receipt of overaward payments, although their survey provided no guide to the numerical effect of such non-absorption on average earnings in the sector.

The federal commission concluded on page 20:

Whilst there is likely to be some indirect cost associated with a safety net adjustment, the evidence before us does not support a conclusion that the indirect costs of a moderate safety net adjustment would be other than limited.

With regard to the likely effects of a safety net adjustment on aggregate wages growth the AIRC noted that, 1:

- the effects of the April 1998 adjustment are already reflected in aggregate wages growth. Accordingly, the granting of a similar increase [in April 1999] *would not of itself marginally alter aggregate wages growth.*

And 2:

- the increase in average earnings arising from safety net increases [this is in 1998] *coincided with an increase in superannuation guarantee contributions of one percentage point. No further increase in superannuation contributions is legislated to* [occur in 1999].

With regards to the likely effects of a safety net adjustment on inflation, the commission stated:

> *The economic effect of any safety net increase will depend upon a number of factors including any monetary and fiscal policy response and the effect of any productivity improvements made by employers in an attempt to offset the cost of the increase. The Joint Governments estimated that the ACTU* [Living Wage] *claim would add 0.9% to AWOTE growth on its safety net increase method.*

The federal commission concluded at page 20:

> *Assuming no change in other factors, an aggregate addition to wages costs in that order would result in an increase in inflation of about 0.5%, reflecting the wages share of input costs of around 60% -*

Submissions to the federal commission addressed two aspects of the effect on the level of employment, namely the micro and macro-economic effects.

The macro-economic effects, comprising the effect of a higher general level of real wages on economic activity and employment and the effect of fiscal and monetary policy responses to safety net increases directed to maintaining the wages growth and inflation objectives.

The micro-economic effects comprised the extent to which wage increases which impose or accentuate a pattern of wage relativities different from that which would emerge from the market could cause structural unemployment.

In terms of the macro-economic effects the parties put extensive submissions to the commission as to the effect of changes in real wages on the level of economic activity and employment. Much of this material was put in previous Living Wage cases.

The federal commission found, on page 22 :

> *It is commonly agreed for example that significant real wage increases in the 1970s had marked adverse employment effects. In contrast, no significant adverse employment effect is evident from recent safety net increases.*

With regard to the macro-economic effects, the federal commission concluded, on page 22:

> *Whilst there is no automatic relationship between the two, real wage growth will have a tendency to adversely affect aggregate*

employment growth. The extent of such affect will depend upon the prevailing economic circumstances and the extent of the real wage movement. A moderate safety net adjustment will have a limited impact on AWOTE growth (and a smaller effect on real wages, to the extent that the wages growth affects inflation) and a minimal effect on employment growth.

In terms of micro-economic effects the parties augmented the voluminous material which had been relied upon and considered in the 1997 and 1998 Living Wage cases.

The federal commission, in its reasons for decision, at page 23, referred to an OECD report - *Making the Most of the Minimum: Statutory Minimum Wages, Employment and Poverty*, which commented:

There is little agreement, at either the theoretical or empirical level, about the precise employment effects of minimum wages, at least over moderate levels relative to average wages. However, there is general agreement that a statutory minimum wage is likely to reduce employment if set above a certain, usually unspecified, level. While sometimes conflicting, the weight of evidence suggests that young workers may be most vulnerable to job losses at a high level of the minimum wage. There is less evidence available on the employment effects, if any, for other groups such as women and part-time workers, who represent a large and growing proportion of the workforce.

This report concluded:

On the basis of the available evidence, however, it is not clear that a rise in minimum wages has unambiguously led to job losses for youth in all circumstances.

The federal commission commented, that this OECD report noted that minimum wages imply both benefits and costs. Potential adverse employment effects arising from statutory minimum wages set too high constitute one such cost. Against that, the beneficial equity effect on minimum wages in narrowing earnings differentials was noted.

The commission concluded on page 24, with regard to the micro-economic effects:

- under current economic conditions, the increases we propose to award, of themselves, will do little or nothing to diminish job prospects.

The Joint Governments devoted a significant part of their submissions to the regional, industry and occupational dimensions of the ACTU claim. They submitted, on page 17:

> *aggregate data masks differential impacts of the proposed safety net adjustments;*
>
> *the effect of safety net increases on employment and activity is likely to be greater in regions and industries that are struggling; and*
>
> *the high coverage of agreements will not reduce the impact of safety net increases on those firms, industries and regions which are currently suffering poor economic conditions and/or those who still rely on award regulation of wages and conditions of employment.*

The Australian Industry Group drew attention to the construction and manufacturing sectors, noting that:

> *the outlook for construction is for a significant slowdown;*
>
> *the Asian crisis has had a major effect on manufacturing exports;*
>
> *manufacturing profits are weak and have been falling; and*
>
> *employment levels in manufacturing remain weak.*

The Retail Motor Industry provided information on trading conditions in the industry and survey data, intended to show the impact of safety net adjustments on typical firms within the sector and submitted that a high proportion of small businesses in the sector only pay award rates and would be subject to safety net adjustments.

The National Farmers' Federation drew upon a paper prepared by the Australian Bureau of Agricultural Research Economics which forecast a 4.8 per cent decline in rural export earnings in 1998-99 and indicated that increased exports of cotton, beef, veal, dairy and winegrape sectors are expected to be more than offset by forecast declines in the value of grain and wool exports.

The federal commission, on page 18, indicated that in determining the ACTU claim, it would again balance a range of considerations including the differential impact across sectors and firms.

The federal commission acknowledged the aggregate effects of any safety net adjustments would vary depending on the amount, any conditions attaching to it and the general economic context.

The federal commission stated, on page 18:

Since the safety net adjustments awarded in the April 1998 decision, economic activity has remained strong despite some moderation, aggregate wages growth has remained steady, inflation has remained low and employment growth has been strong.

On page 14, that the economic material shows no sign of adverse economic consequences arising from the 1998 safety net increases awarded.

At tab D of my exhibit, you have the Tasmania Government submission and that stated:

On any given economic measure, the Tasmanian economy has performed poorly against all other States and consequently, the nation as a whole. Tasmania's difficult economic circumstances have prolonged for over six years, despite the positive performance of the rest of Australia in that same period. The Tasmanian unemployment rate is the nation's highest, and the State is ranked last against other States in State Final Demand, Participation Rate, retail sales, Private Fixed Capital Formation and Average Weekly Ordinary Time Earnings.

Certainly, the federal commission was appraised of the situation of the Tasmanian economy. The Tasmanian submission said:

It is these economic facts . . . that means the Commission's decision in relation to the Living Wage Case will be more difficult for Tasmania than in other States. However, it is the Tasmanian Government's view that none of the structural reasons behind Tasmanian relative economic decline relate to movements in wages and therefore believe on equity a beneficent outcome should be supported.

The submission heeded the submissions of those opposing the ACTU's claim because, amongst other things, the economic conditions of particular sectors of the Australian economy are masked by aggregate data.

In reaching the decision of the Safety Net Review Wages the commission considered the needs of the low paid, and I'm referring to pages 25 to 31 of the commission's decision. In addition to the ACTU unions, governments and the employer organisations, submissions were also received from social welfare sector organisations, the Australian Council for Social Services and the Australian Catholic Commission for Industrial Relations.

The Australian Council for Social Services argued that the shift to decentralised enterprise bargaining has placed *'greater weight on the role of the award safety net in protecting the living standards of low paid workers'* by regularly increasing minimum wages the wage inequality which is a consequence of increases to award rates lagging behind movements in enterprise bargaining can be remedied and that, at the very least, the award rates should be increased consistent with AWOTE increases.

As to the impact of wages on unemployment levels, ACOSS expressed concern that the wages of low paid workers be allowed to decline relative to other groups, arguing that the claimed beneficial effect on employment levels would arise only if unacceptably low pay rates resulted.

ACCOS argued that aggregate wage restraint rather than increasing wage dispersion is likely to be conducive to reduced unemployment.

The Australian Catholic Commission for Industrial Relations argued for the maintenance of a just wage, that is, a wage which has regard for individual need, not solely an employee's value within the labour market.

In general terms, the Catholic Commission supported the ACTU claim, although it did not quantify a level of increase.

On page 26 of the commission's decision, the Catholic Commission for Industrial Relations drew attention to the fact that the not-for-profit sector constituted by church sponsored bodies and community organisations was an area of employment where enterprise bargaining held little attraction.

Additionally, the Catholic Commission stressed that despite the funding difficulties stemming from increases in wages which do not attract commensurate increases in grants or subsidies it was important that the commission maintaining the award safety net both for the low paid and the industrially weak.

The ACTU argued that the evidence of witnesses supported the proposition that low paid workers continue to find it hard to make ends meet, that they have unmet basic needs and that safety net adjustments are welcomed and worthwhile.

The witnesses highlighted having to continuously budget strictly and having to seek extensions for bill paying; having little or no capacity for saving; having unmet needs associated with the basic necessities of life, for example, food, clothing and footwear, and consumer durables; having holidays that are simply spent or spent at home; and safety net adjustments being welcomed but quickly outpaced by increased expenses.

The ACTU submitted, on page 27 and expressed concern regarding the increased widening in income distribution in Australia and said that since 1992, a sizeable gap has opened up between award rates and average earnings and enterprise agreement rates and thus argued that its claim should be granted to ensure that low paid workers do not fall behind those who receive increases arising from enterprise bargaining and overaward payments.

The New South Wales Government supported the ACTU claim and argued that certain sectors of the workforce have not benefited from enterprise bargaining and may not in the future. Workers with no bargaining power should not be disadvantaged because of their inability to negotiate an enterprise agreement.

New South Wales further submitted workers who only have access to award safety net adjustments will play a lesser role in society if their wages are allowed to lag behind other workers. A person's ability to fully participate in society is linked to their financial well-being and stability. The needs of the low paid should be assessed according to community standards. The ordinary time earnings paid to some low paid workers are not sufficient to ensure a reasonable living standard in the Australian community and specific groups of low paid workers should be protected, namely: part-time workers, women, workers of non-English speaking backgrounds and Aboriginals and Torres Strait Islanders.

The Queensland Government submitted that workers with little or no bargaining power should not be disadvantaged because of their inability to negotiate an enterprise agreement and that workers, who only have access to award safety net adjustments, may be in danger of playing a diminished role in society if their wages are allowed to lag significantly behind other employees.

Queensland further submitted that there is a need to contain the growing dispersion in the real earnings of full-time adult employees. There was the possibility of a two-tiered wage structure developing in Australia with an overclass of workers in permanent jobs with access to enterprise bargaining increases and an underclass of low paid award-dependent workers.

Tasmania supported the ACTU's stated position that the clear and intended beneficiaries of their claim are low paid workers and their families who rely on award rates of pay and conditions of employment.

The Tasmanian Government argued, that if the ACTU's claim was granted it would address and assist to redress the disparity in growth in average weekly ordinary time earnings and increases in award rates of pay; income inequality arising from a widening of the gap between bargaining income levels and award based income levels; and the needs of the low paid, through maintenance of an effective and relevant award safety net.

The Joint Governments' submission as to needs of the low paid was that an $8 increase should broadly maintain the real level of award wages for the low paid. That's at page 30 of the decision.

The federal commission in considering the needs of low paid workers found there is clearly a gap between income levels derived from bargaining and those provided by the award system.

At page 31 of the decision, the commission stated:

> *Central to the adjustment of the safety net consistent with* [the provisions of the federal legislation] *is a consideration of the economic factors, the desirability of attaining a high level of employment and the needs of the low paid. In this context we reject the proposition that the low paid include people who are unemployed. The relevant statutory provisions deal separately with the low paid and the unemployed and the expression* 'the low paid' *is intended to refer to persons who are in employment.*

However, as required, the federal commission took the level of employment into consideration.

The federal commission stated, at page 31, that many low paid employees are unable to afford what are regarded as necessities by the broader Australian community.

Given the federal commission accepted that low paid employees are struggling, it is clearly in the public interest to ensure that Tasmanian workers, dependent on award wages, without enterprise bargaining top-ups, are not allowed to fall further and further behind.

The federal commission considered the evidence put by low paid employees and it clearly had a significant impact. The federal commission considered this evidence in the context of a national economy.

The Labor Council submits that the Tasmanian Industrial Commission should grant a flow-on of the federal decision for the same reasons that the federal commission bench relied upon.

In terms of the decision of the federal commission, the federal commission decided upon a safety net adjustment of the following amounts: a $12 per week increase in award rates up to and including $510 per week and a $10 per week increase in award rates above $510 per week.

On pages 32 to 35, in reaching its decision, the federal commission considered the safety net adjustment of $14 awarded in April 1998, whilst providing a benefit to those relying on award rates of pay has not had any adverse effects on the level of inflation and employment.

Whilst noting that the ACCI and others had submitted that the level of labour cost increases flowing from the safety net adjustments varies between sectors of the economy and is greatest where employees receive the award rate without additions by way of overaward payment or through locally bargained agreements, the federal commission considered it is a necessary implication of the safety net concept that there be an appropriate level of minimum wages applying in all industries and they considered the limited capacity of some sectors to absorb the safety net.

The federal commission indicated that they had taken these issues into account and regarded them as considerations which militated against granting the full amount of the ACTU's claim, that is $26.60.

With regard to the date at which increases flowing from the decision should be available, the commission considered the Joint Governments' and some employers' request that there be a twelve month gap between the increases provided for in the April 1998 decision and any increases granted in this case and the ACTU's claim that the increases have effect from April 1999 and operate for twelve months.

The commission decided to require that at least twelve months have elapsed since the rates in the award were increased in accordance with the April 1998 decision before the award is varied as provided for in its April 1999 decision.

The full bench of the commission decided that the Statement of Principles determined would operate until review and noted that it is not the commission that dictates the timing of reviews of the award safety net but rather applications by the parties.

The Joint Governments in their submission to the Safety Net Review Wages, pressed the commission to make significant modifications to the Economic Incapacity principle, and this is on page 45.

The Joint Governments sought to amend the principle by deleting the words *'very serious or extreme'* and submitted that the amendment would ensure that jobs and opportunities for the unemployed are not put at risk as a result of arbitrated increases in labour costs.

The ACCI submitted that the principle should be amended by removing the requirement that any phasing-in of a safety net adjustment should be subject to the principle. They argued, the principle should recognise the important differential macro-economic effects that increases in labour costs have on different sectors of the economy. This, ACCI submitted, should be achieved by providing for phasing-in on an industry, regional or other basis.

The ACTU opposed the proposals of the Joint Governments and ACCI.

In response to the Joint Governments' proposal the ACTU submitted that the commission, in deciding to award a particular level of safety net adjustment, does so by taking into account the objects of the Act, section 3(a) and for ensuring fair minimum wages and conditions of employment section 88B(2).

The ACTU stated that small businesses in financial difficulty do not receive discounts on other inputs such as rent, interest payments and energy bills. No case has been made out that small businesses in financial difficulty for any reason, including managerial shortcomings, should be subsidised by their employees.

The federal commission has considered the operation of the Economic Incapacity principle on a number of occasions. In the April 1998 decision the commission considered whether the principle should have the capacity to exempt all sectors from an increase in labour costs. The commission concluded with respect to the effects on particular sectors:

> *In determining a claim such as that now before us, the Commission must balance a range of considerations. The differential impact across sectors and firms is one consideration. The level of a safety net increase, however, should not be determined by reference only to the effect on employers. To do so would be inconsistent with our statutory obligations to consider the needs of the low paid when adjusting the safety net.*
>
> *We think that any exception from a general safety net increase, to assist particular industries or employers, should be limited. The circumstances of a particular employer can, if necessary, be dealt with through the Economic Incapacity Principle which allows a consideration of the circumstances applicable to that employer.*

In the current case, the commission, at page 49, said that:

> *- in deciding on the level of the safety net adjustment, we have taken into account all of the submissions concerning the cost impact and its effect, particularly on the level of employment at the enterprise level, of granting the ACTU claim.*

Given the diversity of economic conditions which exist within and between industries, the commission considered it inappropriate to introduce a principle which would allow the exemption of industries and sectors from an increase in labour costs without an examination of the individual enterprises. That's on page 50.

The commission referred to the conclusion of the full bench in the 1998 decision on the Victorian Minimum Wage orders, wherein it was concluded that:

It would be unfair to delay access to fair minimum wage levels to persons employed by firms which are not experiencing economic adversity on the basis of the very serious or extreme economic adversity experienced by other employers within a region or industry. Further, it would diminish the effect and intent of relief to employers experiencing very serious or extreme economic adversity if competitors not experiencing such economic difficulties enjoyed similar relief.

Whilst the commission did not grant the changes sought by the Joint Governments and the ACCI, it decided to amend the principle to include the following:

The impact on employment at the enterprise level of the increase in labour costs is a significant factor to be taken into account in assessing the merit of any application.

The federal commission concluded, on page 34 that there are a number of circumstances which tended to reduce the potential impact of the adjustment compared to the April 1998 adjustment, namely, no increase in the level of employer superannuation contribution; the adoption of a twelve month gap between the implementation of the 1998 safety net adjustment and the adjustment provided for in the 1999 case; the amendment to the Economic Incapacity principle, to recognise that impact of an increase in labour costs on employment at the enterprise level is a significant factor to be taken into account.

Implementation of the decision is to be subject to the following:

(a) the increases will be fully absorbable against all above award payments;

(b) the increases will be available from a date no earlier than twelve months after the increases provided for in the April 1998 decision in the award in question;

(c) the commencement of award variations to give effect to this decision will be no earlier than the date on which the award is varied with phasing-in of increases permissible where circumstances justify it. Any application for phasing-in will be referred to the President for consideration as a special case;

(d) by consent of all parties, and where the minium rates adjustment has been completed, award rates may be expressed as hourly rates as well as weekly rates; in the

absence of consent, a claim that award rates be so expressed may be determined by arbitration; and

(e) allowances which relate to work or conditions which have not changed and service increments are to be varied; the method of adjustment is to be consistent with the Furnishing and Glass Industries Allowances decision [Print M9675].

As to why the Tasmanian Industrial Commission should flow on the decision, there are a number of strong arguments as to why this should occur.

Firstly, in terms of past practice and precedent. A review of State Wage Cases, that is, flow on from National Wage Case decisions from 1985 to 1997 shows there has never been a variation in terms of the quantum of wage increases awarded by a National Wage Case decision in Tasmania. This does not mean that it has not been tried.

In 1991, after the ACTU rejection of the April 1991 National Wage Case decision, the Tasmanian Trades and Labor Council argued for the original ACTU Labor Government Accord Mark VI package. This was rejected by the commission.

In 1989 there was a joint approach by the Tasmanian parties to vary the procedure by which awards could be varied, that is, the parties argued for an across the board increase as opposed to an award by award approach. This was later allowed by the commission but the quantum matched the national decision.

In 1987, the commission made the following Statement of Principle about whether or not national decisions should be varied and this is page 28 of the decision of 24 April 1987. The statement says:

> *- we have formed an opinion that only in extraordinary circumstances would it be desirable to settle upon objectives manifestly inconsistent with those of the Commonwealth in a National Wage case.*

This position was re-stated by the full bench in the decision of 13 August 1991, T3166 and T3069, following the Labor Council's application to vary the national decision. And again in the decision of matter T4692 of 1993 - was the first $8 safety net adjustment - and it's page 6 of that decision.

In the 1991 decision already quoted, the commission went on to say that to be convinced that there was a need to depart from the federal decision, the circumstances would need to be special and extraordinary. Thus in terms of practice and precedent, the Tasmanian Industrial Commission has never departed from the quantum

established by the National Wage Case decisions in terms of wage outcomes.

In 1994, T5214 of 1994 decision dated 20 December 1994, there was a departure from the form, shape and wording of the principles as the 1993 amendments to the *Industrial Relations Act* had significantly reorientated the Act to encourage enterprise bargaining.

However, the central and salient features of the federal principles were incorporated by other means into the Tasmanian principles. Thus, again, it was a departure in form rather than substance.

In terms of the analysis of the economic data by the federal commission, the Tasmanian Trades and Labor Council submits that the commission should find compelling the argument that the full bench of the federal commission has examined detailed argument put to it by the Joint Governments and employers going to regional variations and sectoral variations and yet has come down with a uniform decision for the national economy. To strike a different rate for Tasmania would be to suggest that the federal commission had got it wrong.

My submission has already provided the bench with the instances in which the full bench of the federal commission heard and considered arguments about the state of the economy and variations within it.

In terms of federal and state award variations, on a number of occasions the argument, that it would be wrong to have workers covered by federal awards benefit from a national decision and not allow this decision to flow to state workers, has been put. This has been argued by the employers. Tim Abey in T96 and T99 of 1985 on 24 April 1985, page 10 of that decision, despite concerns about the economic impact of flowing on the decision and in T265 and T266 of 1985.

In T432 and T435 of 1986, Tim Abey argued that only in compelling circumstances should there be a departure from federal prescription, and that's page 15 of the decision, dated 22 July 1986.

The argument has also been used before by the Tasmanian Trades and Labor Council, the same decision, T432 and T435 of 1986 dated 22 July 1986 on page 4.

The argument has also been given full weight by the full bench itself, page 11 of the decision T712 of 1987, dated 24 April 1987.

We believe that this argument is even stronger when the numbers of workers actually covered by state private sector awards is considered. We understand that less than 37 per cent, significantly less than 37 per cent of the Tasmanian workforce is actually covered by state awards and the source of this is the Workplace Standards Authority,

from surveys conducted by the Workplace Relations and Small Business since 1990.

It appears that of the workforce 13 per cent have no award coverage, 37 per cent state award and 50 per cent federal award coverage. Now, we all know that that has changed somewhat over time. There's certainly a greater percentage of the workforce in this state covered by federal award than 50 per cent, although there are no figures to substantiate that.

A flow-on of the AIRC decision would obviously affect significantly less than even 37 per cent of the workforce. Public sector employees would not have access to the safety net adjustments. Workers who have gained wage increases through enterprise bargaining and thus where there are agreements, whether they be federal agreements including Australian workplace agreements or state agreements, section 55, or Part IVA agreements could not access the increase.

Clearly, this argument holds again. It is our understanding that a number of federal awards in Tasmania have been varied to incorporate the safety net adjustment without opposition for the Tasmanian Chamber of Commerce and Industry, or whoever they are.

MR EDWARDS: Whoever or whatever?

MS FITZGERALD: I could describe you in other ways.

It would therefore be the height of inconsistency to argue that state awards with application to a small section of the workforce should not be varied to reflect the full decision when the same organisation has not opposed or sought any variation to flow-on to other awards that operate in Tasmania.

The current Economic Incapacity principle provides scope for employers or groups of employers to apply to reduce or postpone any increase in labour cost determined under the principles on the grounds of very serious or extreme economic adversity. The principles indicate that all applications shall be determined in the light of the particular circumstances of each case and any material produced in support will be rigorously tested.

Thus, there exists under the current principles the opportunities for any employer to argue against the flow-on of an increase to their award or enterprise. The commission will give such applications rigorous testing.

Given that the full bench of the federal commission has already reviewed nationwide economic evidence and given the Economic Incapacity principle with the amendment arising from the recent decision, the Tasmanian Industrial Commission can, we argue, be sure

that it is not imposing undue burdens on employers without any employer having the opportunity to argue against the increase.

A decision to flow-on the increase to private sector awards does not therefore lock employers in. However, the principle makes it clear that the material adduced must be substantial and convincing.

In considering generalisations made by employers about the likelihood of jobs being lost as a result of the flow-on of a decision, the commission in its decision on matter T432 and T435 of 1986 said:

> *Statements of this nature are easily made but specific evidence was not placed before us and, likewise, the claims for the increases were not opposed.*
>
> *It is our view that if such statements are made they should be supported by evidence so that the Commission is able to come to an informed view and reach a decision having regard to all factors as they apply in this State.*

The Economic Incapacity principle gives employers the opportunity to challenge an increase affecting their business or industry. It is the only safety valve required in the circumstances.

With regard to the public interest test, section 36 of the *Industrial Relations Act* is a general test which requires the commission to have regard to the economy in general, the level of employment, the economic position of any industry or agreement likely to be affected by a proposed award or agreement and any other matter the commission considers to be relevant to the public interest.

The Trades and Labor Council submits that the needs of the low paid is a matter which the commission should take into account in considering the public interest test. The needs of the low paid is a matter which the federal commission must take into account by virtue of the *Workplace Relations Act*. It has been the central focus of the last two safety net adjustments. It is an important social and economic issue.

Widening income disparity and the inability of a proportion of the members of society to participate in that society through low incomes are clearly issues that are important to the economy in general.

As the safety net adjustment is primarily about adjusting wages for the low paid, the Tasmanian Trades and Labor Council submits that under section 36(2)(c) the full bench of the industrial commission should take the needs of the low paid into account in determining whether the application is in the public interest.

We submit that the application is in the public interest as Tasmanian society and its economy will only suffer from widening income disparity where low paid employees have to make choices between basic necessities. The more people who are marginalised from full social and economic participation, the lower the prospect of local demand playing a role in the restoration of economic growth.

The safety net is particularly relevant to the Tasmanian economy and society. The 1995 Australian Workplace Relations Survey showed that Tasmania has the highest percentage of employees who have received safety net adjustments. In 42 per cent of all workplaces, employees have received safety net adjustments, whereas the Australian average is 24 per cent. This means that the safety net is all the more crucial to the Tasmanian situation as the safety net is relevant to more employees than in any other state or territory.

To not take the needs of the low paid into account would be to ignore the plight of those who are not among the ranks of the economic winners and to minimise the possibility that those people can play a role in assisting the growth of the Tasmanian economy. To ignore this issue would not be in the public interest and would be an abrogation of responsibility. I conclude.

DEPUTY PRESIDENT JOHNSON: Ms Fitzgerald, in connection with the public interest, as a matter of caution, I should remind you, no doubt what you already know, that our specific statutory duty is to consider the economy of Tasmania and the likely effect of the proposed award or proposed agreement on the economy with particular reference to the level of employment.

Is it your submission that what you've put to us goes to that issue?

MS FITZGERALD: There's two points I'd like to make. The federal commission also took account of the Tasmanian economy, as they did occupational groups, industries and other sectoral economies -

DEPUTY PRESIDENT JOHNSON: But that was one among many, wasn't it?

MS FITZGERALD: That was of many, that's right, and I would assume also that the TCCI had input into the ACCI's submission and made sure that they also drew attention to the differences here. So certainly, the federal commission has considered that evidence put. So that's one aspect of it.

The other aspect is that low paid workers in this state that would receive this increase, largely would spend that in the local economy, that the people for whom this increase would be awarded would in fact do that but they would not be spending that money outside the local economy. So, it could be argued that the Tasmanian economy in fact would benefit from the awarding of that wage increase to low paid

workers, so the commission perhaps needs to take that into consideration when considering the local economy and any subsequent impact on employment, presumably through that local spending, will ensure that jobs in Tasmania in fact are protected.

DEPUTY PRESIDENT JOHNSON: So that, in a nutshell, we might interpret your submission in so far as it is relevant to the economy of Tasmania, as relying on the observations of the Australian commission in relation to sectoral and regional aspects of the submissions put to it.

MS FITZGERALD: Certainly, I am saying that. I am saying that the federal commission considered many submissions put to it, many of which I've referred to that go to the differences and hence the reason the federal commission gave, partly, for awarding an amount that was less than the ACTU claimed of $26.60.

One could speculate, that if all economies were booming, for example, if the Tasmanian economy was as healthy as the Western Australian economy or indeed the New South Wales economy, that the commission would have awarded an amount greater than or amounts greater than $10 and $12. So, quite clearly, the amount that the commission awarded reflected the various differences in the economies of the sectors, not only sectors, regions, but obviously industries.

DEPUTY PRESIDENT JOHNSON: Just moving away from that subject, thank you. The document that appears in your exhibit folder under tab D, you have not specifically referred to. Is than an oversight or is there some particular point that you wish to direct our attention to in connection with that.

MS FITZGERALD: It's the submission of the Tasmanian Government and I cited from it. I made reference to it but I didn't read it entirely. It's the submission that the Tasmanian Government put to the federal commission, obviously, indicating the poor state of the Tasmanian economy. It compared the Tasmanian economy on a number of factors against the national economy.

So, quite clearly, as I've said, the federal commission was aware of the economic condition of Tasmania and the Tasmanian Government made the point that the poor performance of the Tasmanian economy could not be attributed to movements in wages and therefore there was no reason to not support the ACTU claim of a wage increase for low paid workers.

DEPUTY PRESIDENT JOHNSON: Yes, thank you. Ms Shelley, are you making a submission today?

MS SHELLEY: No, I'm not, sir. I was merely supporting Ms Fitzgerald's submission.

DEPUTY PRESIDENT JOHNSON: Thank you, Ms Shelley.

Mr Long, are you making a submission?

MR LONG: No, sir. I'm supporting the submission put forward by the TTLC.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Long. Mr Paterson, are you making a submission today?

MR PATERSON: Only very briefly, to come back to the issues that you asked Ms Fitzgerald about. I believe that the evidence she cited in terms of the relationship between wages and levels of employment, in respect to the federal decision, have application in Tasmania and that largely, that issue that you're required to take account of - the impact on the public interest test as it relates to employment levels, I believe was canvassed by Ms Fitzgerald when she made reference to the arguments that the federal commission put its mind to. And my submission will be that those arguments about the relationship between wages and employment are equally valid in Tasmania as anywhere else in the country where that issue has been canvassed.

I'd also like to reinforce the comments that Ms Fitzgerald drew from the ACOSS submission, in relation to the federal proceedings, that the extent of overaward and enterprise bargain rates of pay in the funded sectors, the community sector in particular, in Tasmania is virtually negligible and that we have here a significant number of employees who provide services to people most in need who rely virtually, one hundred per cent, on the award rate and to the extent that we look to the low paid workers and the need to take account of their interests in this state, the sentiments expressed by ACOSS and referred to by Ms Fitzgerald are very much echoed and repeated in the experience of my union. If the commission pleases.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Paterson. Mr Chris Brown?

MR BROWN: No submission, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: Mr Flanagan?

MR FLANAGAN: No, sir.

DEPUTY PRESIDENT JOHNSON: Mr Cooper?

MR COOPER: Mr Deputy President, members of the bench, we reserve our right to make rebuttals when we hear what the Chamber's got to say. Obviously, we would like to hear from the employers. We support the application by the Labor Council and we fully endorse all the submissions made by the Labor Council in respect to this matter.

We think it is a fairly straightforward matter although we understand it may take some time to get to the end of it.

We hope that the commission will be in a position at the end of the proceedings to endorse those submissions of the Labor Council and grant the wage increase that we're seeking from the operative date that's been proposed.

So we rise to support the submissions of the Council.

DEPUTY PRESIDENT JOHNSON: When you talk about rebuttals, I assume you mean, reply?

MR COOPER: That's correct, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: Thank you. Mr Elliott, do you have any submissions to make today?

MR ELLIOTT: No, sir.

DEPUTY PRESIDENT JOHNSON: Mr Noonan?

MR NOONAN: No, Mr Deputy President. We would support the submissions made by the TTLC.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Noonan. We thought we might take a ten minute break before we invite you to start, Mr Edwards - Mr Willingham, I beg your pardon. I wasn't aware that there might be some arrangement as to who would go next.

MR WILLINGHAM: I have no arrangements in place with anyone about my place in the batting order, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: The mistake is probably mine and I apologise, Mr Willingham. This is the first time I've found myself in this position in a State Wage Case, so perhaps you'll pardon me if I've not recognised the usual procedures.

MR WILLINGHAM: You have nothing to apologise for ..[inaudible].. Mr Deputy President. Simply, I was going to say, would it meet your convenience if I commence what I hope to be a relatively brief submission and it might then, perhaps, be a more opportune time for a break and perhaps will aid the employers in the sense that they would then have the benefit of my submission - a bit of time to mull over it.

DEPUTY PRESIDENT JOHNSON: Yes. I think there's some commonsense to that, Mr Willingham, and without consulting my colleagues I'm sure that it facilitates this hearing for us to have you proceed now.

MR WILLINGHAM: Thank you, Mr Deputy President. Mr Deputy President and members of the bench, there are a couple of preliminary matters that I would like to touch upon. The flow from the exchanges earlier this morning in relation to the Trades and Labor Council's request of the bench to amend its application and that in particular goes to the issue of what the Council, in my respectful submission, strongly and correctly categorised as its meaning in terms of the words 'review of the Wage Fixing Principles'.

Now it may be and it may not be, that other parties in this room wish to pursue that point further in any variety of ways and means but can I put on record because I won't have an opportunity perhaps later to do so, that the Tasmanian Government's view is this: there is a need, in the Tasmanian Government's view, for a considered look at our existing Wage Fixing Principles, both in terms of the way those principles are structured and indeed in terms of whether they could be more simply put. There may even be a question as to whether a set of Wage Fixing Principles in its current form is necessary or whether it is essential, whether it should have statutory underpinning and a whole variety of other matters that could be usefully looked at.

However, that is not an exercise that the Tasmanian Government submits should be taking place in the context of this State Wage Case. It is an exercise of our very strong and respectful submission, that ought to be conducted as an adjunct to this hearing as a separate but integrated exercise and it should take place, arguably, and in our respectful submission, perhaps ideally, in say, September, when all of the parties would have had an opportunity to address what they think ought to be done in relation to the set of Wage Fixing Principles that should be adopted by this commission and we would then have the opportunity to come back here and discuss, submit and disseminate the various views.

But to do other than that, Mr Deputy President and members of the bench - to attempt to conduct a review of the Wage Fixing Principles in the context of this hearing where the most urgent matter is to deal with the question of wages for people who are eligible for safety net increases, is only to retard and delay the processes of achieving wage equity and fairness by many weeks, if not months. No harm would be done, no hurt would be caused to any party if the issue of "a review of the Wage Fixing Principles" takes place in the manner or along similar lines to the manner that I have recommended to the commission.

Having said that, we endorse the Council's proposed changes to the Wage Fixing Principles, simply because they are necessary in the context of the application of the safety net increases.

It is not, Mr Deputy President and members of the bench for an intervener to reserve a right of reply but I would nevertheless put in a bid as I think Mr Cooper did and if he can get away with it, so can I. I

would reserve such rights as the bench might afford me, to discuss this matter at a later stage if it becomes necessary.

I also make the point too, Mr Deputy President and members of the bench, I think I correctly interpreted a comment that fell this morning, as saying that there was no statutory underpinning for the Wage Fixing Principles. I'm not absolutely sure I agree with that comment and just in passing, can I refer the commission to sections 32 and 35 of the *Tasmanian Industrial Relations Act* which both make reference to principles adopted by this commission. It's an issue that's been much debated in other forums in recent times, but I stay no further on that.

If I could now, please, turn to the Tasmanian Government's position, which is that the government supports the adoption by the state commission of the decision in the National Wage Case, or Safety Net Review, Print R1999 dated 29 April 1999. Specifically, the state government supports the awarding of a safety net wage increase which will be comprised of $12 per week in respect of award rates up to and including $510 per week and $10 per week in respect of award rates which exceed $510 per week.

Furthermore, Mr Deputy President and members of the bench, the Tasmanian Government submits that the safety net increases should be accessible on an award by award basis from the first full pay period on or after the commission's decision, provided that not less than twelve months have elapsed since the award or awards in question were varied to reflect the 1998 State Wage Case decision.

May I add, quickly, Mr Deputy President and members of the bench, the state government considers that the relevant date for the purposes of establishing what the twelve months should be, we believe that datum point is the point upon which an award was varied to give effect to the first instalment of the safety net increases awarded by the state commission in the 1998 State Wage Case.

As I've indicated, Mr Deputy President and members of the bench, we advocate the retention and the continuance on a short-term basis of the current Wage Fixing Principles amended in the form proposed by the Trades and Labor Council and particularly we note, the need, the necessity, for a consequential amendment to Principle 8.1 of the state's set of Wage Fixing Principles.

Ms Fitzgerald, in her submission, has touched on a number of the arguments why, in the state government's view, the commission should adopt the course we have submitted but perhaps the most important one of all is the reason of consistency, of comity, of equity and of equal treatment for all Tasmanian workers in terms of decisions which emanate from State Wage Cases.

Now it is a fact that since the reintroduction of centralised wage fixing and the adoption or the readoption of Wage Fixing Principles, every

tribunal in the country since 1983 has agreed of the need, except in the most exceptional circumstances, for state tribunals to act consistently with National Wage Cases. There is always an out, there are always departures from National Wage Cases. As Ms Fitzgerald put it, rather more informed than in substance.

Since 1983 there have been no radical departures, no significant departures and there are very, very good reasons for that and Ms Fitzgerald touches on one of them when she alerts the full bench to the number of employees who may in fact be covered by state awards.

Now, no one knows how much credence can be given to figures which are collated by the various authorities which do it, but taken at face value the figure that the Council was provided with, that is, 37 per cent of workers in Tasmania were covered by state awards in, I think, 1995, that is the maximum number of people who could be affected by the decision of this commission in this case. That 37 per cent of course reduces quite significantly because a number of those employees will not be eligible for increases out of this decision.

All those people who are covered by an enterprise or workplace agreements may have an award varied but will not derive an increase from it. In general terms, the public sector will not derive an increase from variation to the awards for the safety net. So, the figure of 37 per cent probably gets down to a great deal less than 30 per cent, perhaps as little as a quarter. So, in effect, in a tangible sense, the application by the Council is in respect of about a quarter of the members of the Tasmanian workforce.

The other 75 per cent, Mr Deputy President and members of the bench, have either got the increase granted by the federal commission because they are under federal awards, or they have received increases equal to or in excess of the safety net increases because they are covered by other arrangements, such as workplace agreements, or they are award-free and presumably doing as much, if not better, than the outcome of the claims would produce.

Average weekly earnings in Tasmania at the moment are $686 per week. An increase of $10, because that's what such person, if we can have that average person would be entitled to, would be $10. That's 1.45 per cent for a year. The person who gets this increase, Mr Deputy President and members of the bench, doesn't get another 1.45 per cent at Christmas time or in March next year, they have to wait another year before getting another increase - 1.45 per cent.

The whole point of the increases which are being sought by the Council and by employee organisations is, we believe, with great respect, worth emphasising. It is a safety net adjustment. A method of wage fixing quite expressly brought in so that it would underpin the industrial relations environment of enterprise and workplace bargaining.

It is quite specifically intended to act as a minimum set of conditions. It acts as the floor to workplace bargaining. It acts as some sort of protection for people who are vulnerable, to market forces who are vulnerable because they are unrepresented, they are vulnerable because they don't know their industrial rights in an enterprise bargaining situation. It is there to stop from free-fall through a paper-thin floor of wages and conditions in certain circumstances.

It's said, Mr Deputy President and members of the bench, that the safety net is intended to encourage, to incite enterprise bargaining; that because those increases are so modest, so small; because their general effect is negligible, that it will encourage both employers and employees to participate in bargaining at the workplace. The reality of course, Mr Deputy President and members of the bench, is that the opposite often is the case because the people who are covered by this safety net in many, many instances don't have the power or the force to compel bargaining better outcomes and in many instances employers who are required to pay these two amounts, $10 or $12 for a year, have no incentive whatsoever to want to do anything else.

So as Ms Fitzgerald quite rightly points out, to a great many people covered by awards of this commission, the only relief they will get from their increased costs and their declining purchasing power, is the $10 or the $12 that this commission, we hope, will grant. And if they are fortunate enough to wind up negotiating an enterprise bargain, the amount of money that you award will be taken into account. It's not as though they're going to double up or double dip.

This argument of consistency - Ms Fitzgerald has again pointed out that we are not aware of any federal award of this state being processed with applications under the Economic Incapacity principle. We assume that, or we are entitled to assume, because of their muteness, that those employers who were parties to the awards varied by the federal commission thus far have not found the increases of $10 or $12 to be an unsupportable impost. We are entitled to assume, because of their silence, that they agree with the federal minister for workplace relations, that it was a good outcome all round.

But most of all, Mr Deputy President and members of the bench, may I recapitulate by saying this, were you not to grant the application, you would effectively discriminate against and marginalise and treat unjustly, in my very respectful submission, the very people who most need your protection and your insight in making this decision.

Mr Deputy President, you talked with Ms Fitzgerald about the provisions of section 36 of the Act quite properly require you to have most serious regard for a number of issues. The Tasmanian Government has made its submission quite clear in relation to the economy of this state and may I refer you to exhibit D of the Trades and Labor Council's exhibit book, in which our written submission which was marked as Tasmania 1 in the federal Safety Net Review case

was put. It was also supplemented, Mr Deputy President and members of the commission, by a brief oral submission and it may be that, with your consent, I'll read that into the transcript. It can be found on pages 72 and 73 of the transcript of the Safety Net Review case 1999. If I may read, and starting with a quote:

> *It is not intended to enlarge upon those written submissions,* [that is the exhibit Tasmania 1] *merely to recap what has been put. In short, the principal position of the Tasmanian Government is first and foremost full support for the claim as advanced by the ACTU. That claim has been advanced from its witness evidence, its comprehensive view, analysis of current mid term and long term economic conditions and its detailed review and conclusions attaching to the needs of the low paid in the context of prevailing living standards in Australia.*
>
> *Statistically, the ACTU has pointed to an economic environment characterised by robust growth, business confidence, low inflation, high productivity, employment growth and the lowering in unemployment trends. The Tasmanian Government further supports an increase in the minimum wage and the retention of the linkage of the minimum wage to the C14 classification in the Metal Industry Award for reasons which have been articulated in the ACTU's written response which is exhibit ACTU8 in these proceedings.*
>
> *In our view, the ACTU has demonstrably reviewed the economic conditions to the point of providing a prima facie conclusion that the effect of previous safety net adjustments awarded by this Commission have had a negligible effect on most key economic considerations and economic performance indicators. The needs of the low paid vis-a-vis prevailing living standards have been addressed in a fulsome manner, through witness statements, through the unchallenged evidence of three witnesses and by reference to the research paper, Development of Indicative Budget Standards for Australia, as an informative document for the Commission's considerations in its deliberations on the needs of the low paid.*
>
> *The conclusions drawn by the ACTU through both its written and oral submissions and which broadly speaking are that the quantum of increases are modest, economically affordable and responsible and will provide patent and discernible benefits to the low paid workers and their families, are conclusions that receive the support of the Tasmanian Government. Of course, as Mr Belchamber* [the advocate for the ACTU in that case] *has*

highlighted, a decision in this matter would involve a consideration of the imperatives of inflation, productivity and employment on the one hand, and the needs of the low paid against a background of prevailing living standards on the other.

Should those who seek to dissuade the Commission from granting all or any that is sought by the claimants and their submissions are persuasive to the point that the Commission determines not to award all that is sought, then the secondary position of the Tasmanian Government is that the minimum increases to the award on this occasion should be no less than the quantum awarded in the April '98 decision, that is the $14, $12 and $10 effectively.

As indicated by Mr Belchamber in oral submission today, the current economic conditions are arguably better than those prevailing at this time last year. That is a statement from which the Tasmanian Government does not demur. In addition, Mr Belchamber has adequately demonstrated that the quantum increase of the 1998 decision has not been detrimental to the key economic criteria. In the view of the Tasmanian Government, increases in the alternative position that we have proposed should similarly be of minimal effect on the economy, but of beneficial effect in assisting to meet the needs of low paid workers.

Mr Deputy President, members of the bench, what the Tasmanian Government was doing at that time was in fact supporting the much higher increases that were being sought by the ACTU. In the event, the Australian commission has not granted those but the Tasmanian Government's position was that it would not be detrimental to the national and particularly the state economy if increases of the size sought by the ACTU were granted by the commission.

It therefore follows, as night follows day, that if indeed the actual increases awarded are less than half of those which the Tasmanian Government supported and believed would not be detrimental to the economy of Tasmania, it follows, as surely as night follows day, that we do not believe that the increases being sought in this case will be detrimental to the economy of Tasmania and it therefore follows surely, that we do not believe that the increases being sought will be detrimental to the levels of unemployment or that they will stifle employment growth.

It is certainly our observation, Mr Deputy President and members of the bench, that that was demonstrably the case, the consequences of both the 1997 and the 1998 State Wage Case decisions.

In summary, Mr Deputy President and members of the bench, we urge your favourable consideration of the application by the Trades and Labor Council. If the commission pleases.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Willingham. We will adjourn these proceedings for 10 minutes.

SHORT ADJOURNMENT 11.55am

HEARING RESUMED 12.15pm

DEPUTY PRESIDENT JOHNSON: Mr Edwards?

MR EDWARDS: Thank you, deputy president. Just before I do commence, I just wanted to check one issue, to ensure that I am responding in total to what is to be put by those supporting the application and I just simply noted that Ms Fitzgerald, in presenting the TTLC case, did not make any specific references to the changes to the principles that were sought which are attached as the last document in their exhibit book and I just wondered whether or not it was Ms Fitzgerald's intention to refer to them at all. If not, I'm quite happy to begin to proceed now but I just wanted to make sure that if there was to be a discussion about those principles that it was had before I commenced my response.

Certainly, Mr Willingham referred to them but I don't think Ms Fitzgerald did.

DEPUTY PRESIDENT JOHNSON: Ms Fitzgerald, I took it that you had said all you wanted to say about document F, prior to the initial adjournment and hence, I didn't ask you. Is that the case?

MS FITZGERALD: Yes, it is the case. I had explained the nature of the change I was seeking prior to proceeding with my submission and that in fact is the change to the principles, that we will be seeking to reflect the federal commission's decision in terms of amounts, date, and as I mentioned, a change to the Economic Incapacity principle.

DEPUTY PRESIDENT JOHNSON: Yes. Just to take the matter a little further because there certainly was a point that perhaps I did fail to invite you to touch upon and that was the operative date and the method of dealing with these matters which appears in the draft of the principles. Just so that Mr Edwards knows where he's going to and what he has to respond to, that is in fact your submission as to operative dates as contained in document F?

MS FITZGERALD: That's right, it is. It is twelve months since the first safety net adjustment was awarded last year, so 14 July this year is twelve months from the date of the first safety net adjustment last year.

DEPUTY PRESIDENT JOHNSON: Yes, and the manner of dealing with them is on an award by award basis?

MS FITZGERALD: No. The manner of dealing with them in this is the common operative date, from 14 July.

DEPUTY PRESIDENT JOHNSON: Yes. You're conscious that the minister's submission is somewhat different from that?

MS FITZGERALD: Yes. I've heard that this morning.

DEPUTY PRESIDENT JOHNSON: Yes. All right. Thank you, Mr Edwards. I think that clarifies your position, does it? It looks like you're replying to two submissions in relation to operative date.

MR EDWARDS: Yes, that would appear to be the case, deputy president, and one would appear to be seeking to follow on the National Wage Case decision and one providing something a little different.

DEPUTY PRESIDENT JOHNSON: Yes.

MR EDWARDS: Deputy president and members of the bench, it is very evident from the submissions of both the Labor Council and the state government that the step the TCCI have taken in respect of this State Wage Case to oppose the flow-on of the federal National Wage Case decision is largely without precedent before this tribunal.

Certainly, I think the submissions given in that regard by the minister's representative and indeed by the Labor Council clearly trace the history of State Wage Case decisions before this tribunal and it is fair to say that it is relatively unusual for, certainly the TCCI and indeed employers generally to oppose the flow-on of the quantum of a National Wage Case increase.

The decision on this occasion has been taken by my organisation, at least, with considerable regret. It is our contention that the circumstances that influenced the Australian Industrial Relations Commission to award the increase that it did are not replicated in Tasmania and that in our view it is incumbent on this commission to make a decision which is based on Tasmania's specific circumstances and in that regard, deputy president, the question you put to Ms Fitzgerald was in our view, a very relevant question.

It is with some regret that I advise that we have been unable, in the context of this State Wage Case, to reach an agreement between employer organisations and the Trades and Labor Council representing generally the trade union movement in this state. However, we found that we were not prepared to reach an agreement that in our view and on our assessment, that would be contrary to

good economic practice and would have a deleterious effect on the state's economy.

The position that has been advocated by the Trades and Labor Council and supported by, or largely supported by the minister is, in our view, economically unwise and we believe will have an adverse impact on the economy of the state of Tasmania.

The decision of the Australian Industrial Relations Commission in their Safety Net Review Wages decision of April 1999 found in Print R1999 dated 29 April, the actual findings and reasons for their decision is found commencing at page 32 of that decision. At paragraph 82, the Australian Industrial Relations Commission note as follows and I quote:

> *As noted elsewhere, Australia's economic performance in the year since the last safety net decision has been good, as it has been since the early part of this decade. Economic and productivity growth are strong, investment has been at historically high levels and inflation has been low. The immediate economic outlook is positive. There is, however, need for caution in light of a projected slowing in economic growth and a reduction in the level of new private investment both of which may slow employment growth. Accordingly we are conscious of the need to ensure that increases in labour costs should not put at risk the downward trend in the level of unemployment evidence since the end of 1997.*

We take this passage from the federal decision to mean that the AIRC have been satisfied on the basis of the material put to them that the economy has been good for the most part of this decade and especially that economic and productivity growth have been strong and that investment has been historically high.

In our submission, this situation is not replicated in any objective analysis of the Tasmanian economy and that the federal commission may well have made an alternate finding had they been faced with the reality of the economic performance of Tasmania rather than the much more up-beat and rosy national picture.

At paragraph 83 of their decision, the federal commission observed as follows:

> *In all of the circumstances we have decided that a safety net adjustment is warranted. To refuse or defer consideration of the ACTU's claim would run counter to our statutory obligations to have regard to the needs of the low paid and the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community.*

Therefore, in light of their findings on the economic material before them and to satisfy their statutory obligations, the federal commission decided that a safety net adjustment was warranted.

We say, and we'll produce evidence to demonstrate, that the same outcome could not be produced from an examination of the Tasmanian economy and that the Tasmanian commission does not have the same statutory obligations as those imposed on the Australian Industrial Relations Commission by their statute, the *Workplace Relations Act 1996*.

The Australian Industrial Relations Commission also predicated their decision on the growing divergence in the rate of increase in award rates of pay and the growth of earnings generally. This statement is found at paragraph 84 of the full bench decision in Print R1999, at page 32:

> *Over the two years up to the end of December 1998 increases in award rates arising from safety net adjustments have not kept pace with the growth in earnings generally. Nor have they kept pace with increases resulting from enterprise agreements. The gap between income levels established as a result of bargaining and those determined by the award system has widened since 1992-93. Of employees dependent on safety net adjustments for increases, those at the lower levels have fared better than those at the higher levels because adjustments have been in dollar amounts rather than percentages. Those submissions which focus on the magnitude of the increases in the minimum wage level arising from safety net adjustments do not provide a balanced assessment of the effect of safety net adjustments on the award system or their labour cost impact.*

That last paragraph, we say, relates to the submissions that were made to the federal commission in the context of a thing called the federal minimum wage, which does not have a counterpart within Tasmanian state awards, it being an issue that the Labor Council elected not to pursue some two State Wage Cases ago.

The TCCI believe that the issue that's discussed by the full bench of the federal commission at paragraph 84 of their decision ignores substantially that those that are obtaining their wage increases through enterprise bargaining have had to negotiate increased productivity and efficiency in exchange for the increases they have received. This is not the same situation for employees who have obtained their increases through safety net adjustments.

With the focus of wage fixing having substantially devolved to the enterprise level, it is incongruous that increases of this magnitude

should be available to employees who are not required to add to the productivity or efficiency of the business in which they are employed.

The nature of the increase awarded by the Australian Industrial Relations Commission and that which is largely being pursued by the Trades and Labor Council in these proceedings will be a net addition to wage costs with no prospect of offsetting the additional costs other than by decreasing employment levels.

The option of increasing prices simply does not exist in an economic setting of very low inflation and negative economic growth. We will present evidence, in fact, of forming price expectations by Tasmanian businesses for a lengthy period of time which adds to the likelihood that employment numbers will fall as a result of a favourable consideration of the Labor Council application.

In the introduction of the principles of this commission it is noted:

> *This statement of principles to be observed in the jurisdiction of the Tasmanian Industrial Commission has been developed to encourage enterprise bargaining, and the development of equitable and workable enterprise bargaining relationships between employers, employees and their unions.*
>
> *The process of enterprise bargaining is conducted within the framework of an award system which provides a safety net of secure, relevant and consistent wages and conditions of employment.*
>
> *The award system provides a safety net of wages and conditions which underpins enterprise bargaining and protects employees who may be unable to reach an enterprise agreement while maintaining an incentive to bargain for such an agreement.*
>
> *The principles are also designed to ensure that the structural efficiency process continues to apply to awards of the Tasmanian Industrial Commission and that the award review process is effectively implemented.*

In our submission, the existing application seeks to circumvent those overriding sentiments that underpinned the 1998 State Wage Case and continue in force as at the current point in time. In our view, the increases now claimed significantly inhibit the incentive for employees to pursue enterprise bargaining, circumvent the continued pursuit of structural efficiency changes and circumvent the award review process.

The purpose behind the devolution towards enterprise specific outcomes in wage fixation is the need to ensure the competitiveness of

Tasmania's and Australia's businesses is enhanced through balancing wage increases with the approved productivity and efficiency changes.

Wage adjustments at an award level act to negate this policy direction if allowed to proceed at too high a level. This is because the incentive to bargain is significantly reduced if award level increases operate at a level in excess of inflation and without counterbalancing productivity and efficiency initiatives.

Increases in award wages through safety nets have totalled $60 since this methodology was introduced into award wage fixing, which on my calculations is equivalent to 14.38 per cent increase in wages using the base trade rate, without any requirement for the pursuit of changed work practices or other efficiency initiatives.

In our submission, this level of increase without any attention to productivity is not able to be sustained in the longer term and can only lead to unsustainable increases in labour costs with consequent adverse impact in employment and/or insolvencies.

In our submission, it is incongruous to compare only the wage increase component of bargaining outcomes with wage increases derived through safety net adjustments. Outcomes from enterprise bargaining processes are almost invariably much more complex than simply a wage increase. They involve a range of changes to conditions of employment and work practices designed to offset in whole or in part the cost to the enterprise of the wage adjustment. No such amelioration is available through the safety net adjustment concept which, in our view, means this was an invalid comparison for the Australian Industrial Relations Commission to make.

The TCCI, contrary to many commonly held beliefs, have no in-principle objection to wage increases as such but where they are not underpinned by improvements in the productive performance of the enterprise they constitute a net additional cost burden for business which cannot be recovered from the Tasmanian marketplace in the economic circumstances in which it currently is operating.

In our submission, we will demonstrate on a range of economic data, that the increase proposed by the Trades and Labor Council cannot therefore defy Tasmanian business without adverse economic consequences, especially for employment levels.

We intend to put to the commission a number of revisions to the principles - and I've heard what the bench have had to say in that regard this morning - which in our view are an appropriate series of changes designed to ensure that labour costs are primarily drawn from enterprise bargaining and that other labour cost increases are minimised.

In that regard we repeat our earlier submission, that the principles are formulated to ensure that the enterprise bargaining processes are underpinned by a secure, relevant and consistent framework of wages and working conditions and that there are other facets of the Australian Industrial Relations Commission that go beyond simply the quantum of an increase.

In its decision, the federal commission were persuaded by the submissions of the Joint Governments and some employers to ensure a 12 month gap between increases arising from the 1998 Safety Net Review Wages Q1998 and any increase arising from the Safety Net Review Wages R1999. This aspect of the AIRC decision is found on page 33, paragraph 88 and commented upon on in paragraph 89:

> *The date of which increases flowing from this decision should be available was a matter of debate during the case. The Joint Governments and some employers asked us to ensure that there is a twelve month gap between the increases provided for in our April 1998 decision and any increases provided for in this case. It was said that if safety net adjustments occur too close together intolerable pressures will be placed on many employers and ultimately jobs will be lost. The ACTU opposed the proposal. We consider a case has been made out by the Joint Governments and the employers concerned. The Statement of Principles will be amended to require that at least twelve months have elapsed since the rates in the award were increased in accordance with the April 1998 decision before the award is varied as provided for in this decision.*

And at paragraph 89:

> *There are a number of circumstances which will tend to reduce the potential impact of this adjustment compared to last year's adjustment. First, we note that an increase in the level of employer superannuation contributions occurred in July 1998. No such increase will occur in the year in prospect. Second, as we have just indicated, we have decided to adopt proposals to bring about a twelve month gap between the implementation of the 1998 safety net adjustment and the adjustment provided for in this decision. This will ensure that safety net increases are not implemented too close together in a way which may cause economic difficulties. Third, we have amended the Economic Incapacity Principle to recognise that the impact of an increase in labour costs on employment at the enterprise level is a significant factor to be taken into account.*

Later, at paragraph 93, on page 34 of their decision, the bench said:

With one exception we have adopted the same approach to the implementation of this decision as the Commission adopted in the April 1998 decision. The exception is that for the increases provided for in this decision to be available in an award at least twelve months must have elapsed since the increases provided for in the April 1998 decision. Implementation will be subject to the following:

(a) the increases will be fully absorbable against all above award payments;

(b) the increases will be available from a date no earlier than twelve months after the increases provided for in the April 1998 decision in the award in question.

It's interesting to note that the purity of the position being advocated by the TTLC on the need to flow-on the Safety Net Review Wages decision of the Australian Industrial Relations Commission does not extend to the adoption of the twelve month minimum gap between increases to awards arising from the 1998 decision and increases to awards arising from the 1999 decision, as that change would be contemplated in the context of the 1998 State Wage Case decision.

We submit that a pure application of such approach into the circumstances before this tribunal would require an operative date of not before 14 October 1999.

In our view, it is entirely inappropriate for the parties to appear in this commission wishing to argue for a flow-on of only part of the national decision and we say, if a flow-on is what is sought, then it should be warts and all.

We will address the commission later during our submission, further, about the changes sought to the principles and particularly the change being sought to the Economic Incapacity principle.

It is important, in our view, to state in the context of this application by the Trades and Labor Council, that the Tasmanian Industrial Commission is not simply an arm of the Australian Industrial Relations Commission. This commission exists within and is a creature of a statute of the state of Tasmania and is required to exercise its jurisdiction within the parameters of the *Industrial Relations Act 1984*. In this context the Tasmanian Industrial Commission is not a rubber stamp of its national counterpart nor is it required to have regard for any of the statutory tests imposed by the Australian Industrial Relations Commission by virtue of the *Workplace Relations Act 1996*.

The Tasmanian Industrial Commission is required to apply a number of statutory measures in the execution of its role under the *Industrial Relations Act 1984*. The commission's role is succinctly set out in section 20 of the Act which in summary requires the commission to: act according to equity, good conscience, and the merits of the case without regard to technicalities or legal forms; it shall do all such things as appear to be right and proper for effecting conciliation between the parties and for settling claims by agreement between parties; it is not bound by the rules of evidence but may inform itself on any matter in such a way as it thinks just; and c) shall have regard for the public interest.

This commission has in the past acted in a manner inconsistent with the direction of the Australian commission and has tended to jealously guard its independence. We submit that this application creates another opportunity for the commission to demonstrate its relevance in wage fixing in this state.

It will be our submission that there are cogent grounds for this commission to critically analyse the Australian Industrial Relations Commission Safety Net Review Wages decision and to produce a decision which is consistent with Tasmanian circumstances.

We suggest that there are very many of the foundations for the federal decision which are not replicated in a Tasmanian context and this situation of itself constitutes good reason for the commission to depart from the federal outcome.

In our strongest submission, we say the commission's role must be to test the key assumptions and foundations for the national decision in a state context and to consider the union claims in light of the result of that exercise. To do otherwise would be to act without regard to the commission's responsibilities under the Act. This same situation was confronted by the South Australian Industrial Commission recently in respect to the application in that state for the flow of the same decision that is being considered by this commission and that's decision I.29/1999 of the Industrial Relations Commission of South Australia.

In that matter the commission was confronted with an argument by the United Trades and Labour Council in South Australia for a shortening of the twelve month delay factor inherent in the federal decision whilst the employer organisations sought to extend the twelve month delay factor.

In considering that issue the South Australian Commission said:

> *Given the basis of the decision of the Australian Commission in the context of detailed submissions and comprehensive evidence from Unions, Governments and Employer groups across Australia, it would seem to us that a departure from the 12 month*

delay would require a careful assessment of the local circumstances and substantial. evidence of an economic nature specifically related to the economy of South Australia. We say this both in the context of a shortening or a lengthening of the delay.

A little further down on that same page, page 6:

What was clear however was a thrust to have the wage increases either stayed or implemented over a period longer than 12 months.

The submissions of the south Australian Employers' Chamber of Commerce and Industry ('the Chamber') also went to the implementation of any wage increases that would flow from a determination by this Full Commission.

The Chamber, in its written submission said at p.2:

'In doing so, we will demonstrate that South Australia is in a far worse position in relation to its unemployment and investment role than is demonstrated by the National data upon which the Australian Full Commission relied. We will then further submit that because of South Australia's worse position in relation to the unemployment and investment role that not only is there a stronger argument for South Australia to have a 12 month gap between last year's increase and this year's increase, but also to make that gap even longer.'

And a little further after the end of that quote from that advocate the commission said:

As with the UTLC application we are of the view that the evidentiary onus has not been met by the employers' case and for similar reasons.

Then on page 7, half-way down the page the bench said:

Whilst we do not accept the employer's case that the state of our economy warrants a longer phase-in of safety net adjustments, we are satisfied that the rationale leading to the Australian Commission's decision is, at the very least, applicable to the current circumstances of this jurisdiction. The specific circumstances of the 'delay' in concluding the 1998 State Wage Case, do not on the basis of the case presented, lead us to the conclusion that the 12 month delay should be removed from the package determined by the Australian Commission.

It should be appreciated that the 'right' to adjustments under State Awards does not arise as a consequence of the Australian Commission's decision. Section 100 makes it clear, that this Commission may adopt and apply any such decision but only when such would be consistent with the objects of the Act. This requires a detail consideration of the basis of the Australian Commission's decision in the context of our jurisdiction, and there is an onus upon the Full Commission created by the Act to that end. We find that the declaration, detailed hereunder, is consistent with the objects of the Act.

In so doing, we make it clear that his decision arises in the context of the current proceedings only. The Full Commission is not thereby making any commitment to follow the same course of action in any future proceedings of this kind.

Whilst that's a little long-winded I draw from that quote from the South Australian Commission decision, clearly, they believe they are required by virtue of their statute to apply national decisions with some caution and to carefully test the assumptions within those national decisions before adopting them into the jurisdiction of the South Australian Industrial Commission. And we say the same situation applies in respect to this commission and in that context we say, of primary importance is the requirement reposed in section 36 of the Act for the commission to have regard for the public interest.

The provisions of section 36 of the Act require, firstly, 36(1):

Before the Commission makes an award under this Act or before the Commission approves an industrial agreement, the Commission shall be satisfied that that award or that agreement is consistent with the public interest.

At 36(2):

In deciding whether a proposed award or a proposed industrial agreement would be consistent with the public interest, the Commission shall -

(a) consider the economic position of any industry likely to be affected by the proposed award or proposed agreement;

(b) consider the economy of Tasmania and the likely effect of the proposed award or proposed agreement on the economy of Tasmania with particular reference to the level of employment; and

(c) take into account any other matter considered by the Commission to be relevant to the public interest.

And if I might comment there that the TCCI has very little difference with the submission of the Trades and Labor Council and to some extent even that of the Tasmanian Government about the variety of factors that might arise under section 36(2)(c) of the Act, and that is, that the commission would in that context need to have some regard for the needs of the low paid and other relevant considerations that may fall by way of submissions from the parties to the commission.

We say that the requirements of section 36 must be brought to apply by the commission in the context of this application. In particular, we submit that the nature of the application before the commission requires rigorous examination of the economy of Tasmania and the likely effect any decision may have on the economy of this state with particular reference to the level of employment.

In the context of a contested state wage case, this section will take on considerably more importance than it has tended to assume in the past.

It is our view that the Australian Industrial Relations Commission decision in R1999 is founded on economic material that reflects the buoyant nature of the national economy and the $12 and $10 increases represent the Australian Industrial Relations Commission's assessment of an affordable increase in the light of their assessment of the national economy.

This commission is not required to assess the national economy and to determine an affordable wage increase on the basis of the national economic data, rather, it is the responsibility of this commission to weigh economic material that assesses the nature of the Tasmanian economy and on the basis of that material to determine what increase, if any, is affordable and indeed from what date.

In our view such an approach which is mandated by the requirements of section 36 will unavoidably lead this commission to reaching a different conclusion to that reached by the Australian Industrial Relations Commission in their Safety Net Review Wages of 1999.

Simply put, we believe that a fair and rigorous analysis of the economy of the State of Tasmania will not support a conclusion in line with that reached at a national level by the Australian Industrial Relations Commission. It has been argued that the Tasmanian economy forms part of the national economy which was subjected to the scrutiny of the Australian Industrial Relations Commission.

Not even I would stand before the commission and argue that that's not true because of course it is true; Tasmania is part of the Commonwealth of Australia.

We say, however, that the Australian Industrial Relations Commission are only required and in fact only do have regard to the national economy and in so doing do not, and to be realistic probably cannot, have regard to the economic circumstances that exist within individual states and individual sectors, if you like, or individual industries which is the quote from Ms Fitzgerald's reading of the AIRC decision this morning. That requirement is, in our view, clearly established by section 90 of the *Workplace Relations Act* which doesn't apply to this commission but clearly obliges the Australian Industrial Relations Commission to have regard for the national economy and the economy of the nation of Australia in making its decisions which is a different test and a different consideration than the one that falls to this commission.

Conversely, this commission is required to pay sole attention to the Tasmanian economy in its statutorily imposed obligation under section 36 of the Act and in that regard the views of the South Australian Industrial Commission, we submit, are apposite.

We do not say that a decision of the nature of the Australian Industrial Relations Commission Safety Net Review Wages should be lightly dismissed by this commission. Obviously that is a decision of considerable weight and one that this commission will no doubt have considerable regard for.

And I make the comment at that point that the quotes from my colleague and boss, Mr Abey, that we used this morning to discuss positions adopted by the TCI as we were at that stage and TCCI now, we don't resile from, but it would be an extraordinary situation which would require this commission to depart from following a national wage case decision.

But we do say this commission is required to reach its own conclusions in accordance with the statute within which it operates and it would be inappropriate to simply adopt another tribunal's decision without examining the circumstances within that decision was reached and determining whether or not those same circumstances exist in Tasmania.

Mr Deputy President, I just note the hour. I was about to move on to a slightly different part of my submission and from my perspective it would be an appropriate moment to take a short lunch break but I'm quite prepared to continue should that be the wish of the bench.

DEPUTY PRESIDENT: Yes, thank you, Mr Edwards. Just on the point of your concluding submissions, was the state of the Tasmanian economy as you foreshadow you will be painting it - I beg your pardon - is the state of the Tasmanian economy as you foreshadow putting it later in submissions put to the Australian commission on the TCCI's instructions?

MR EDWARDS: The detailed material upon which I will rely in proceedings before this commission, were not, as I understand it, before the Australian commission. The TCCI instructed the Australian Chamber of Commerce and Industry, in the creation and making of its submissions which the commission would no doubt have noted in its reading of the AIRC decision, put a proposition that the increases were not economically sensible - the ones being sought - and in fact argued for a deferral of the national adjustment. In that context the submissions of the ACCI apply equally to Tasmania as they do anywhere else in Australia and we, I suppose, in that regard are as guilty as most others, and that is that we didn't put detailed economic material to the AIRC on which they may able to gauge the situation in the State of Tasmania.

Having said that, the AIRC had a wealth of material, including the submission of the state government that's been referred to this morning that talked about the extent to which the Tasmanian economy is so seriously under-performing the national economy. And Ms Fitzgerald read part of that from her exhibit this morning. To that extent the fact that the Tasmanian economy is so far below that of the national economy was obliquely referred to. But certainly the depth of the material that I'll take the commission to this afternoon was not to my knowledge presented.

DEPUTY PRESIDENT: All right. We'll resume at two o'clock.

LUNCHEON ADJOURNMENT 1.00pm

HEARING RESUMED 2.22pm

DEPUTY PRESIDENT: We have been advised during the luncheon adjournment of serious health circumstances that concern one of the advocates appearing in these proceedings. The other principal parties to the proceedings have been advised of those circumstances. We are satisfied in consideration of those circumstances that we should adjourn these proceedings until the advertised time of 9.30 on Monday morning.

We do now adjourn the matters until that time and date.

HEARING ADJOURNED 2.23pm