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TRANSCRIPT OF PROCEEDINGS

O/N 0668

TASMANIAN INDUSTRIAL COMMISSION

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

**T No 11548 of 2004
T No 11564 of 2004
T No 11566 of 2004
T No 11565 of 2004**

STATE WAGE CASE 2004

**Applications pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Tasmanian Trades and Labor Council to vary the
above re increase all private sector awards re increased
rates and work related allowances, meal allowances and
the supported wage**

HOBART

2.20 PM, WEDNESDAY, 7 JULY 2004

HEARING COMMENCED

[2.20pm]

PN1

THE PRESIDENT: Thank you. Do we have a procedure that we have agreed on; which one do you want to deal with first or - Ms Fitzgerald?

PN2

MS FITZGERALD: Yes, I do, if it please. I would like to deal with T11548 which is the application to vary awards for the safety net, and follow that with T11564 - - -

PN3

THE PRESIDENT: Yes.

PN4

MS FITZGERALD: - - - to vary meal allowances and then T11566 the supported wage. Do you want me to deal with the next matter at this time or - - -

PN5

THE PRESIDENT: Perhaps if you just want to put something on the record and then we can adjourn it.

PN6

MS FITZGERALD: Okay. In terms of my application T11565 which seeks to vary bereavement leave, carers leave and parental clauses to ensure that the definitions and thus eligibility are consistent with the Relationships Act, this application was discussed with the TCCI or the intention was discussed quite some time ago and on 11 June I forwarded draft clauses to the TCCI for their consideration and apparently these were received by Mark Watson on 14 or 15 June. The TCCI, as I understand, while consenting to an application to vary awards to ensure consistency with the Relationships Act yesterday questioned my intention to amend the parental leave clause which, amongst other things, provides long-term casuals with an entitlement to parental leave and by general order to insert this clause into all private sector awards of the Commission.

PN7

This particular clause, this parental leave clause, was really a variation of the Federal test case parental leave clause, and it was varied to accommodate matters that were allowed in this jurisdiction, for example, and I guess amongst other things, to allow an employee with consent to return to work after the birth or the adoption of a child, on a part-time basis and that clause was accepted by the then President of the Commission in September 1999 through the award review process, and that was an award review conference between the TTLC and the TCCI, and it has been inserted into a number of awards, albeit regrettably a relatively small proportion of awards, so given the differences in terms of this particular clause and some matters that now need to be resolved, I would seek leave of the Commission to request an adjournment of this particular matter so - not only the parental leave clause but the proposed changes to bereavement leave and carers leave resulting from the Relationships Act, so an adjournment and the further assistance of the Commission in resolving these matters.

PN8

THE PRESIDENT: All right, thank you. There is no objection to that is there, Mr Watson?

PN9

MR WATSON: No, President.

PN10

THE PRESIDENT: All right. No problems; no. On that basis we will adjourn T11565 of 2004 and the Commission will organise a conference between the parties to deal with the issues surrounding that application.

T11565 ADJOURNED ACCORDINGLY

T11548, T11564, T11566 HEARING CONTINUED

PN11

THE PRESIDENT: In respect to the other three applications could I take appearances in all of those matters, please?

PN12

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

PN13

MR P. TULLGREN: I appear for the Liquor, Hospitality and Miscellaneous Union.

PN14

MR T. KLEYN: I appear for the Health Services Union of Australia, Tasmanian No 1 Branch.

PN15

MR J. RUSSELL: I appear on behalf of the Shop, Distributive, Allied Employees Association, Tasmanian Branch.

PN16

MR M. WATSON: I appear on behalf of the Tasmanian Chamber of Commerce and Industry and with me is MR N. BEHRENS.

PN17

MR T. PEARCE: I appear for the Minister for Industrial Relations in matter T11548 only.

PN18

MR K.J. RICE: I appear on behalf of the Tasmanian Farmers and Graziers Employers Association.

PN19

THE PRESIDENT: Thank you. I think that is the lot. Ms Fitzgerald?

PN20

MS FITZGERALD: Thank you. President, Members of the Bench, the application lodged by the Tasmanian Trades and Labor Council - and I have handed up a list of exhibits and our application is at tab 1 - seeks to one, increase all award rates and existing allowances relating to work or conditions in private sector awards of the Tasmanian Industrial Commission from the first full pay period to commence on or after 1 August 2004, in accordance with the decision of the Australian Industrial Relations Commission of May 2004 contained in print PR 002004, safety net review -wages, and two, to increase the minimum wage that is payable to adults without regard to the work performed to \$467.40 per week and three, to the extent necessary to effect these changes, to amend the principle for the Commission.

PN21

As we submitted last year when making applications to vary award rates of pay, it is efficient at this time to also increase the meal allowance to reflect consumer price movements and to vary the supported wage system and consequently I have applied to make these variations and seek to have these matters joined.

PN22

THE PRESIDENT: There is no objection to all of the matters being joined I take it? That is fine.

PN23

MS FITZGERALD: My submission will address the ACTUs claim and responses to it; the matters that were considered by the Full Bench of the Australian Industrial Relations Commission and its decision on the ACTUs claim; the matters relating to the Federal statement of principles; the reasons why the Tasmanian Industrial Commission should flow on this decision, and finally the applications to increase meal allowances and supported wage. With regard to the ACTUs claim the ACTU sought a \$26.60 weekly increase in all award rates with a commensurate increase in wage-related allowances and this is in the reasons for decision, which is at tab 2 of the exhibits.

PN24

With regard to the responses to the ACTU claims while employer organisations and associations represented oppose the ACTUs claim, they conceded that a moderate increase in award rates of pay was appropriate. The Australian Chamber of Commerce and Industry identified a moderate increase as an amount of up to \$10 per week in award rates up to and including the tradesperson's classification and that is C10 of \$542.20 per week.

PN25

The Australian Industry Group supported a \$10 per week increase in all rates of pay. The Australian Government, as in every national wage case since 1996, opposed the ACTUs claim but argued it did not oppose any increase of up to \$10 per week in award rates of pay up to and including the tradesperson's rate. All State and Territory Governments supported an increase of \$20 per week in all award rates. As in past cases a number of community organisations, including the Australian Council of Social Service, the Australian Catholic Commission of Employment Relations made submissions in support of a safety net adjustment.

PN26

The Australian Catholic Commission of Employment Relations renewed its 2003 claim that the Commission should set a benchmark of appropriate guidelines within which the needs could be established and while supporting the ACTUs claim submitted that \$26.60 was insufficient to provide a fair minimum rate of pay for award only employees. The Disability Employment Action Centre, a Commonwealth-funded community legal centre, and the National Council on Intellectual Disability, a national body representing people with disabilities, supported the ACTUs claim and urged the Commission to introduce measures to secure the inclusion of the supported wage clause in all awards to eliminate discrimination in awards and agreements and to establish a safety net of fair minimum wages and conditions for workers with disabilities.

PN27

In terms of the matters considered by the Federal Commission the Federal Commission is required to consider both economic factors and the needs of the low paid and the economic factors considered were the indicators of past economic activity, including wage movements; the immediate economic outlook; the cost of the ACTUs claim; award employees and award-reliant industries and economic and employment effects of safety net adjustments and with regard to past economic activity I am referring to the statement which is at the front of your Federal decision at paragraph 4, and the Commission states the GDP overall increased by 3.5 per cent in the year to December 2003.

PN28

During the last 12 months private investment continued to grow strongly with the exception of dwelling investment. Imports continued to grow strongly and exports declined slightly. Inflation as measured by CPI was 2.4 per cent in December 2003, down from 3 per cent in December 2002. Unemployment has crept steadily lower standing at 5.6 per cent in December 2003. Employment, particularly full-time employment, showed encouraging growth. Productivity increased at satisfactory levels, GDP per hour worked in the market sector grew by 3.2 per cent during 2003. Profits remain at high levels, despite differences between the parties concerning the proper method of measuring the profit share; no one suggested that the share of total factor incomes attributed to profits is a serious obstacle to a safety net adjustment.

PN29

And with regard to the economic outlook again at the statement at paragraph 6 the Australian economy is expected to continue to perform well throughout the 2003/4 financial year with GDP forecast to increase by 3 3/4 per cent compared with the budget estimate of 3 1/4 per cent. It is expected that employment will continue to grow and unemployment will reduce further. There are some areas of risk including the potential inflationary effects of the rise of the Australian dollar; the pace at which parts of the rural economy recover from the drought, and the exposure of the manufacturing sector, to exchange and interest rate movements and global capacity. Overall there are grounds for optimism that the economy will perform strongly in the immediate future.

PN30

In considering the cost of the ACTUs claim the Commission concluded, and this is at paragraph 124 of the decision, if granted in full the ACTU claim would lead

to an increase in aggregate labour costs of no less than .1 per cent in nett terms and no less than .4 per cent in gross terms and that the actual cost is likely to be more but it is not possible to be precise about the issue. With respect to award employees and award industries, and this is at paragraph 133, the Commission acknowledged the declining incidence of award-reliant employees in the workforce and that award-reliant employees are generally paid less than the rest of the working community, are more likely to be women, are concentrated in three industry sectors: accommodation, cafes and restaurants; retail trade and health and community services; are overwhelmingly employed in the private sector and overwhelmingly employed in non-managerial occupations and concentrated in lower-skilled occupations.

PN31

Data relating to the economic performance of most award-reliant sectors, including growth in output, profits, employment and productivity was put before the Commission and the Commission indicated at paragraph 166:

PN32

Based on the material before us, we adhere to the conclusion reached in the May 2003 decision that it has not been demonstrated that there is a negative association between safety net adjustments and productivity growth. There is no necessary association between award coverage, safety net adjustment and productivity growth.

PN33

And they concluded at paragraph 167:

PN34

Having regard to the range of material in respect of the economic performance of the most award-reliant industry sectors, we are unable to discern any negative impact from the safety net adjustments which have been awarded in recent years.

PN35

As in previous cases, previous national wage cases, various parties relied on academic papers, other research and surveys to address the effect on employment of minimum wages. The Commonwealth relied on the minimum wages report commissioned in response to the Commission's May 2003 decision wherein the Federal Commission encouraged the parties, and in particular the Commonwealth, to give consideration to facilitating a comprehensive, representative and technically robust survey to provide direct and contemporary information relevant to the Commission's task in adjusting the wages safety net. Of this report and the other research submitted to the Commission the Commission concluded, and this is at paragraph 236:

PN36

The material to which we have been referred does not undermine the conclusion expressed by the Commission in the May 2003 decision that there is a continuing controversy amongst academics and researchers about the employment effects of minimum wage movements. There is nothing before us to indicate that the controversy has been resolved. We endorse the view expressed in that decision that taking all of the research

into account, it has not been established that moderate increases in the wages of the low paid, of themselves, will diminish aggregate employment outcomes, although some studies suggest that some negative effects might occur for employees receiving the minimum wage.

PN37

Both the Australian Chamber of Commerce and Industry and the National Motor Industry relied on telephone surveys of their memberships which sought to provide data on the impact of the May 2003 decision on employment and other indicators of economic performance, and of this the Commission concluded:

PN38

The results of the ACCI and the NMI surveys confirmed the broad conclusion reached in the May 2003 decision and that is there are employment effects of safety net increases with respect to some employers. Such effects operate differentially and adverse employment effects are more evident in relation to those employers directly affected by safety net increases.

PN39

"This year's surveys also demonstrate that as a result of the May 2003 decision," and this is at paragraph 253, "some firms increased prices and a large number of firms experienced a decrease in profitability."

PN40

The Australian Chamber of Commerce and Industry also produced data on award coverage by State and inflation by capital city which it submitted demonstrated a positive correlation between the proportion of total employees whose pay is determined by award only and the rate of inflation.

PN41

And that is at paragraph 255. And at paragraph 257:

PN42

The Commission determined that the material in the form presented is of little assistance to us in explaining the role which the safety net adjustment has on inflation rate in reliant industries. With regard to the needs of the low paid the Federal Commission by statute is required to consider the needs of the low paid.

PN43

In the 2003 safety net review the ACCER and ACOSS submitted that the Commission should conduct an inquiry into the needs of the low paid for the purpose of determining benchmarks and in the May 2003 decision the Commission decided amongst other things that:

PN44

Our rejection of the proposals for an inquiry should not be taken as a rejection of the utility of empirically determined benchmarks such as the poverty line. Indeed it seems to us that the use of such measures is relevant to an assessment of the needs of the low paid.

PN45

And that is at paragraph 222. In response to the Commission's observations at that time in this case the ACTU commissioned the University of New South Wales Social Policy Research Centre to provide a report on the incomes required by Australian working families to meet their needs in 2003 and presented this to the Commission. The Commission concluded at 284:

PN46

In our opinion the Social Policy Research Centre budget standards provide an indication that for certain household types the Federal minimum wage is significantly below the amount which is necessary to provide a modest living standard for those households in the context of living standards generally prevailing in the Australian community.

PN47

In response to the Australian Council of Social Services repeated submission that the Commission undertake an inquiry to ascertain the appropriate benchmark for the adequacy of minimum wages the Commission advised it would, and this is at paragraph 286:

PN48

Receive and consider evidence directed at establishing an appropriate benchmark for the adequacy of minimum wages in the context of a future safety net review.

PN49

In response the Australian Chamber of Commerce and Industry's submission that the low paid extends well beyond those in employment the Commission determined that the Australian Chamber of Commerce and Industry's submission was incompatible with the established interpretation of the expression low paid as it appears in the Workplace Relations Act, as referring to low paid in employment. The States and Territories relied on the second report from The State of Working Victoria Survey conducted by ACIRRT in which low pay was defined as a rate of less than \$12.15 per hour or \$461.70 per week and this is at paragraph 289, I think.

PN50

The report found, amongst other things, that low-paid workers are predominantly found in the private sector and concentrated in the industries of accommodation, culture, recreation and personal services, retail trade, construction and wholesale trade. The Commission, at paragraph 290, in response to criticisms of the report, said:

PN51

We accept that differences between the economies and labour markets of several States and Territories make it inappropriate to generalise directly from the report to other States and Territories. Nevertheless we think the report may provide some indication in relation to the matters it addresses that have relevance to this process.

PN52

As in previous cases the ACTU relied on statements from employees in a range of occupations to demonstrate the difficulties low-paid have in affording what

are, in the context of living standards prevailing generally in the Australian community, basic necessities. The Commission found, at 291:

PN53

It is apparent from the evidence of those employees that they struggle to make ends meet and no party to the present applications sought to suggest that the needs of the lowest paid are fully met. Indeed, there appears to be a general acceptance that the lowest paid have difficulty meeting their needs.

PN54

Largely in response to the Australian Industry Group submission that in considering the needs of the low paid it is important to recognise the interaction between safety net adjustments and income tax and social security payments and ACOSs counter-challenge that a substantial reduction in poverty and income inequality requires wages sufficient for a single person living alone to live decently and where a wage earner supports dependents' supplementary social security payments. The Commission acknowledged at 308 that:

PN55

Increases in award wages are a blunt instrument. Nevertheless, increasing award wages is the only instrument that the Parliament has conferred upon the Commission in order to discharge its statutory obligation to maintain a system of enforceable awards that act as a safety net of fair minimum wages and conditions of employment in the context of living standards generally prevailing in the Australian community.

PN56

With regard to the decision on the ACTUs claim the Commission acknowledged its obligation to have regard to the desirability of attaining a high level of employment and concluded, at paragraph 323:

PN57

Economic conditions generally, including the level of domestic demand, indicate that a significant increase is sustainable on this occasion and the limited arguments and materials advanced in this case for the proposition that past safety net adjustments have had a significant negative effect on employment were unconvincing. We also consider that any potential negative effects must be weighed against the real benefits of safety net adjustments for employees who depend upon them for increases in wages, particularly low paid employees.

PN58

At 324:

PN59

We affirm the Commission's view, stated in the Safety Net Review - Wages May 2002 decision and repeated in last year's decision, that in the normal course of reviewing the safety net the Commission should seek to maintain a safety net of fair minimum wages for all employees. We are not persuaded that a departure from that course is warranted on this occasion on economic, equity or other grounds. We have decided not to cap the

adjustment. Since no party sought a percentage adjustment we have determined to award a dollar amount at all classification levels.

PN60

And at 325:

PN61

Several parties, in particular the Commonwealth, submitted that the ACTU claim ignores the requirement for the Commission to establish a genuine award safety net and encourage workplace bargaining. As the Commonwealth pointed out in a previous decision the Commission has recognised that increases in award wages have the potential to influence the speed at which agreement-making is taken up. This is a factor to be taken into account in assessing the parties' proposals. On the other hand, no one would suggest that all employees are capable of bargaining. Bargaining is not a practical possibility for employees who have no bargaining power.

PN62

It is to be inferred from the statutory scheme that the award safety net should be adjusted with the interests of these employees in mind. Furthermore, the safety net adjustments in recent years have been accompanied by a steady growth in the number of employees covered by agreements. As we have noted elsewhere, data from the May 2002 EEH Survey show that 20.5 per cent of employees, or about 1.6 million employees, were award-reliant in May 2002. The corresponding figure from the May 2000 survey was 23.2 per cent. Taking all of the material and submissions into account, including the material relating to costs, we have decided to award an increase of \$19 per week in all award rates.

PN63

As in past cases, the Commission required implementation of the adjustment to be subject to the following conditions and these are set out at paragraph 329 and I don't intend to read through those.

PN64

THE PRESIDENT: No, we are familiar with them.

PN65

MS FITZGERALD: Thank you. With regard to the statement of principles and proposals to vary that, both the Australian Chamber of Commerce and Industry and the Australian Industry Group sought amendments to principle 9, the Australian Chamber of Commerce and Industry proposing that the operative date of any variation arising from the safety net review should be 28 days from the date the order is made. The Australian Industry Group proposed an additional commitment to that already required by the existing principle in relation to absorption and a commitment to continuous improvement in productivity, efficiency and flexibility at workplaces covered by the award. In response to the ACCI proposal at paragraph 340, the Commission said:

PN66

We are not persuaded that the amendment as sought by ACCI is appropriate or warranted. There is insufficient material before us to support a principle of general application requiring a 28-day delay in the operative date of an order for the application of a safety net adjustment to rates in an award.

PN67

And with regard to the AIGs proposal, for a number of reasons including that the Commission was satisfied from the material put before it that productivity had improved in the three most award-reliant industries throughout the period of the safety net, their proposal or their proposed amendment was rejected. As in the past, I have submitted that there are a number of reasons why the Tasmanian Industrial Commission should flow on the AIRCs decision including past practice and precedent of the Commission, Tasmanian economic conditions and the public interest. With regard to past practice and precedent of this Commission, it is appropriate to reiterate that on no previous occasion since the Commission's introduction of the current regime of wage-fixing principles in 1985 as the Commission declined flow on the quantum of wage increases awarded by the Federal National Wage Council or the safety net adjustment decisions.

PN68

With regard to Tasmanian economic conditions, I will refer briefly to relevant aspects of the Tasmanian economy as described in Budget Paper Number 1, Budget Overview 2004/05, chapter 2, and this is at tab 3. Of past economic performance generally - and this is at page 33 - it is stated:

PN69

There has been a substantial improvement in the Tasmanian economy over the past two years. All major economic indicators except overseas exports showed strong growth over this period. The growth in activity has been driven by increases in consumer spending, private sector investment including some major infrastructure projects and to a lesser extent public spending, principally public investment. The increase in visitor numbers has been an important contributor to this growth. The strength of the national economy has also assisted Tasmania's growth by stimulating demand for Tasmania's exports to mainland States and Territories.

PN70

And of wages growth, at pages 38 to 39:

PN71

The average level of wages in Tasmania and the rate of wages growth have been below those in Australia as a whole in recent years. While the change in full-time average weekly ordinary time earnings (AWOTE) is the benchmark measure for growth in wage rates, changes in total earnings provide a better guide to movements in average income levels as this measure includes overtime and wages paid to juniors and part-time workers. It is also particularly relevant in the Tasmanian context, given the relatively high proportion of employed persons in part-time work.

PN72

And in 2002/03 part-time positions accounted for 30.8 per cent of all jobs in Tasmania compared to 28.7 nationally. In 2002/03, Tasmanian AWOTE increased by 5.6 per cent or \$43.77 per week. The Federal Commission relies on the wage cost index as the most direct measure of changes in wage costs for a particular position and thus sees it as their most useful indicator for their purposes and I have listed, at tab 4, the wage cost index for the period September 2002 to September 2003 which includes the increases that flow from the safety net review 2003. Now, you can see from that that the wage cost index in that period increased nationally by 3.6 per cent compared to a 3.5 per cent increase in Tasmania.

PN73

Back to the budget papers, pages 39 to 40, and dealing with employment, it is reported that employment in Tasmania has experienced significant growth over the past year with average employment in the year to March 2004 increasing at the highest rate since 1990, late 1990. The level of employment in March 2004 was 4.3 per cent or 8800 persons higher than the 11 or 12 months earlier. Tasmania experienced the strongest growth of all States and Territories for the March 2003 to March 2004 period with a national average employment growth of only 1.5 per cent over that period. From March 2003 to March 2004 full-time employment grew by 3.4 per cent while part-time employment increased by 6.5 per cent.

PN74

It is interesting to note, and I think relevant for this Commission, that the industries that contributed most to employment growth included the largely award-reliant industry sectors of retail trade, and that was an increase of 2925, and accommodation, cafes and restaurants, an increase of 2550 working people. With respect to labour force participation and unemployment, at pages 41 to 43, it is stated:

PN75

The strong growth in employment through the year to March 2004 and the relatively subdued growth in the participation rate (.3 per cent) has resulted in a significant fall of 2.1 percentage points in the unemployment rate through the year to 6.8 per cent in March 2004, the lowest level since June 1981.

PN76

And there is a chart, Chart 2.5, on page 42 which actually shows that very sharp decline in the unemployment rate in Tasmania in comparison with Australia. It is quite graphically represented.

PN77

The number of people participating in the labour force, either employed or actively seeking employment, increased by 4500 persons (2 per cent) through the year to March 2004 to 227,300 persons. The number of persons unemployed in Tasmania in March 2004 was 15,500, 4300 persons fewer than in March 2003 and the lowest number unemployed since January 1982. This suggests that a significant number of new vacancies have been for semi-skilled and non-skilled jobs as, relative to the workforce

as a whole, a disproportionately large share of unemployed persons do not have post-compulsory education or training. This is supported by the industry data - - -

PN78

and this is Chart 2.6 on page 44 which shows the employment changes by industry sector in Tasmania and shows again that the jobs growth has been in retail, manufacturing and accommodation, cafes and restaurant sector where a high proportion of the jobs are in the unskilled or semi-skilled category. It is relevant for the Commission to note that the industries that contributed most to employment growth, as I have said, were largely award-reliant industry sectors. In terms of the Tasmanian economic outlook and including labour market, the table 2.5 on page 64 which outlines Treasury's estimates for key economic variables for Tasmania for the 2003 full year and forecasts for 2004/2005 and it shows the estimate of growth in State economic activity for 2004/05 has been increased - 2003/04 - has been increased from the forecast of 3.5 per cent in 2003/04 budget to the current estimate of 6 per cent with expected economic growth in 2004/05 of 3.2 per cent and that is compared to an estimate of growth for the Australian economy of 3.5 per cent.

PN79

Tasmania's participation rate is forecast to average 59.5 per cent for the year with an unemployment forecast decrease from an estimated 7 per cent in 2003/04 or to 6.7 per cent in 2004/05. On the basis of this economic analysis there has not been any adverse impact on employment in our safety net adjustment and it is not anticipated that the increase being sought here today will have any detrimental impact on the level of employment in Tasmania. Rather, we would argue as we have previously, that was only a moderate increase in a way that may have some beneficial effect on the Tasmanian economy and perhaps facilitate employment growth.

PN80

With regard to equity issues, our argument accepted by the Commission in the past is that it would be wrong in terms of consistency, quality, equity and equal treatment for all Tasmanian workers to refuse to flow on the Federal decision in circumstances where (1) State awards cover approximately 25 per cent of award-covered workers in Tasmania and where (2) there has been no employer objection to flow on the increases in Federal awards that have application in Tasmania and that argument that has been accepted in the past obviously is valid today. I am advised by a number of unions that Federal awards having application in Tasmania have indeed been varied to incorporate the safety-net adjustment without opposition from employers or employer organisations.

PN81

Within the principles, the economic incapacity principle clearly allows an employer who can demonstrate that an increase in labour costs would cause serious or extreme economic adversity and result in job losses at the enterprise level allows them to make application to reduce, postpone or phase in the increase. With regard to the public interest and the needs of the low paid, whilst the Federal Commission has explicit responsibilities with respect to the needs of the low paid, this Commission in the past has accepted our argument that the

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

PN82

In this jurisdiction, as in the Federal jurisdiction, award-reliant workers are generally paid less than the rest of the working community, more likely to be women, concentrated in three industry sectors, accommodation, cafes and restaurants, retail trade and health and community services, overwhelmingly employed in the private sector and overwhelmingly employed in non-managerial occupations and concentrated in lower-skills occupations. The lives of low-paid working people in Tasmania will be somewhat improved by an increase in award wage rates and thus we submit it is in the public interest to flow on the increase awarded by the Federal Commission. In concluding, the application to flow on increases from a common operative date of 1 August 2004 is sought for the following reasons.

PN83

Twelve months will have elapsed since awards were last varied for the safety-net adjustment. If the Commission decides to flow on the increases it is equitable to ensure that all eligible workers receive the increase not later than 12 months after the last adjustment and that matters outside their control do not delay the application of the increase and it is administratively effective and efficient both for the Commission and the parties for a common operative date with the orders being issued by the Commission. At tab 5 I have submitted a proposal which details the conditions applying to the implementation of the safety net and they are no different from the conditions that have applied in the past. So wage rates in private sector awards be increased by the safety-net adjustment of \$19 including junior, apprentice and trainee rates on a proportionate basis as from the first full pay period to commence on or after 1 August 2004, the safety net being reduced to the extent of any over-award payment currently being paid by the employer.

PN84

Wage rates in private sector awards will only increase by the safety-net adjustment as from the first full pay period on or after 1 August 2004 where existing wage rates have been varied to include the arbitrated safety-net adjustment arising out of the August 2003 State Wage Case and a period of 12 months has elapsed since the wage rates in the award were increased to reflect the safety-net adjustment arising out of the August 2003 State wage case. In awards where the variation for a safety-net adjustment arising from the August 1999, August 2000, August 2001, August 2002, August 2003 State Wage Case decision is by consent and does not result in an increase in the wage rates actually paid to employees or the increase in wage costs for an employer and applicable 12 months' delay between variations may be waived.

PN85

Consequently, the Federal or the State minimum wage be increased by \$19 to \$467.40 per week and existing allowances relating to work or conditions be

increased by 3.5 per cent as from the first full pay period on or after 1 August 2004. I urge the Commission to vary State awards as submitted as from 1 August 2004. My application also seeks to amend the wage-fixing principles of the Commission to the extent necessary to effect the variations sought and my proposed amendment is at tab 6. I have retained the reference to T10230 of 2002 as the Commission determined a process in respect of awards where the lowest adult weekly wage rate prescribed therein is less than the State minimum wage which is currently \$448.40 and with this application is going to be increased to \$467 per week and amongst other things indicated that the Commission was of the view that within a period of no longer than three years all awards of the Commission will reflect a minimum wage amount being the same as the Federal minimum wage.

PN86

Presently there are a number of awards which have an adult rate of pay which is less than the current Federal minimum wage and thus this process is still relevant.

PN87

THE PRESIDENT: It is a decreasing number I hope.

PN88

MS FITZGERALD: There is a decreasing number, yes, most definitely. There is one other minor amendment to the principles and this arises from, I guess, the reformatting of the Metal and Engineering Industry Award. Currently, at principle 8, it talks about the way in which - the formula for expenses/allowances being adjusted, and it refers to a level 7 Metal and Engineering Industry Award and this should be corrected to reflect those changes. So it should say "wage group level C10 Metal and Engineering Award". Thank you.

PN89

THE PRESIDENT: Okay. Right, do you want to deal with the three applications? That then only requires one response from everybody.

PN90

MS FITZGERALD: Terrific. So in terms of T11564 it has been agreed between the parties, as I have said, that at the time of seeking to vary awards for the safety net that it is also efficient to adjust meal allowances in private sector awards and thus facilitate a single order being made which encompasses a number of variations. So before proceeding I must seek leave to correct my application and fess up about something I - an error I made. Last year when we were making application to increase the meal allowance I incorrectly referred to the all groups weighted average of eight capital cities and not the sub-group - this is in terms of the CPI - the sub-group, meals out and take-away foods, rated average of eight capital cities, and this error resulted in establishing a meal allowance of \$12.30 when it should have been \$12.25. So accordingly this year when I performed the calculation and used the correct figure I have used the corrected figure of \$12.25 rather than \$12.30 and I have tendered my corrected application at tab 7.

PN91

THE PRESIDENT: Okay, thank you.

PN92

MS FITZGERALD: So that seeks to vary meal allowances to reflect the percentage movements in the consumer price index for the category of meals out and take-away for the period March 2003 to March 2004 and that results in a percentage increase of 3.78 so applying that to \$12.25 results in an increased amount of \$12.70 and I have listed the awards and relevant clauses in schedule A to be varied and I would ask the bench to adopt that application.

PN93

THE PRESIDENT: Okay, that is clear.

PN94

MS FITZGERALD: And in terms of T11566 - and again I seek leave of the Commission to amend my application. At the time of making the application the amount was not known and so my amended application, which is at tab 8, suggests that the supported wage payment be increased from the current \$60 to the very generous amount of \$61 and this amount was published on 1 July, as I say, which was after the date on which I made my application. The supported wage system clause was inserted into awards to facilitate the encouragement of workers with disabilities in open employment and a rate of pay commensurate with the employee's assessed productive capacity. In order to make an adequate assessment of the employee's capacity a trial period of 12 weeks, which in some cases could be extended by up to four weeks, was available which would attract a minimum payment of \$45 per week.

PN95

The minimum amount payable was directly related to the Commonwealth Government's income test applicable to a single person receiving a disability support pension. The Full Bench of the Tasmania Commission was satisfied that the proposed scheme had substantial merit and was in the public interest. In 2002 and again in 2003 we made application to adjust the minimum amount payable to employees engaged under the system to the level of the disability support pension income test-free area of earnings in 2002 to \$56 and in 2003 to \$60 as from the first full pay period to commence on or after 1 August. This application seeks to adjust the minimum payment under the supported wage system to the level of disability support pension income test-free area of earnings which was increased to \$122 per fortnight as from 1 July 2002 and the relevant Centrelink or the guide from the Commonwealth Government payments published by Centrelink is attached at tab 8, so behind the application, and lists the figure as being \$122 per fortnight which translates to \$61 a week.

PN96

We normally deal with this matter after it has been determined by the Federal Commission but my understanding is that applications are currently being forwarded to the Federal Commission who on receipt of the applications will conduct a concurrent hearing. Now, given the matter has not been determined by the Federal Commission but that we expect that the payment will be varied as it has been in the past I propose that the Full Bench of the Tasmanian Industrial Commission increases supported wage from \$60 to \$61 per week effective as from 1 August, subject to any variation to the adjustment of this payment by the Australian Industrial Relations Commission.

PN97

THE PRESIDENT: One presumes that the same formula will apply in the Federal Commission, yes.

PN98

MS FITZGERALD: That is right, as I understand it, yes.

PN99

THE PRESIDENT: Yes.

PN100

MS FITZGERALD: This application has been discussed with the Tasmanian Chamber of Commerce and Industry and we have their support in seeking to update the minimum payment on awards of the Tasmanian Commission. I submit that the application is in the public interest and does not offend the wage-fixing principles of the Commission. Thank you.

PN101

THE PRESIDENT: Thank you. Mr Tullgren?

PN102

MR TULLGREN: If the Commission please, we support the submissions of my learned friend, Ms Fitzgerald and support the variations being made in the terms sought.

PN103

THE PRESIDENT: Thank you. Mr Kleyn?

PN104

MR KLEYN: President and members of the bench, clearly the HSUA supports the application made by the Trades and Labor Council. I just want to make a point in respect to T11548 the meal allowances.

PN105

THE PRESIDENT: Yes.

PN106

MR KLEYN: The schedule A which is attached to the application, there are four awards to which the HSUA is a respondent. They being the Medical Diagnostic Services Private Sector Award, the Dentists Award, Hospitals Award and the Nursing Homes Award, they are not included on this list and it appears from checking those awards that they have not appeared on lists for State wage case matters for a number of years because the rates for meal allowance in those awards are: \$5.50; \$5.70; \$5 and \$5 respectively.

PN107

THE PRESIDENT: Quite some years by the looks of it.

PN108

MR KLEYN: Some years so I just indicate that we will be making separate application to address that matter to hopefully get them resolved.

PN109

THE PRESIDENT: I think that is very wise.

PN110

MR KLEYN: Thank you.

PN111

THE PRESIDENT: Right, thank you. I don't know what has happened to those. Mr Watson?

PN112

MR WATSON: Thank you, President. I would just like to table an exhibit please to commence submissions.

PN113

THE PRESIDENT: I will mark Ms Fitzgerald's exhibit book as A1 and yours as R1.

**EXHIBIT #A1 TASMANIAN TRADES AND LABOR COUNCIL
EXHIBIT BOOK**

EXHIBIT #R1 ANALYSIS OF TASMANIAN ECONOMY

PN114

MR WATSON: President and members of the bench, our submissions today go to the issue of firstly the application to vary all State awards by the \$19 safety net adjustment and consequently the increase in work-related allowances, and the other two applications before you which is the increase in the supported wage and the increase in the meal allowances. Dealing with the application for the safety net adjustment first, the document that I have tabled is a comprehensive analysis of the Tasmanian economy magnificently prepared by TCCIs economist, Nick Behrens. I don't intend to go to the detail of the document, but I will just read a couple of passages from it:

PN115

In relation to the economic outlook Tasmania is experiencing a period of sustained economic buoyancy with nearly all key economic indicators having improved throughout 2003 and indeed 2004.

PN116

In relation to the labour market, Tasmania's labour market has improved dramatically with record levels of employment and a large fall in the unemployment rate. The State's participation rate continues to be one area that we can improve on but in the main the news is positive.

PN117

In relation to business confidence the immediate economic outlook remains extremely buoyant.

PN118

And finally in relation to the general outlook:

PN119

Tasmanian businesses look forward to the future with confidence and we face a trading year that is shaping up to be a bumper one. Businesses are overwhelmingly indicating that they are anticipating engaging additional resources across 2004 to meet this buoyant economic environment.

PN120

President and members of the bench, section 36 of the Act requires the Commission to take into account the economy of Tasmania with particular reference to the level of employment. Based on the analysis of the Tasmanian economy as per exhibit R1 we advise that we don't oppose the Trades and Labor Council's application to vary awards by the safety net and work-related allowances. And we don't believe the application would in fact offend the public interest test of the Act.

PN121

In relation to the other two matters as I have said we don't oppose the application to vary the supported wage and in fact support that application with the calculations and also in relation to the meal allowances and believe that this is the most efficient way to deal with these matters on a yearly basis.

PN122

THE PRESIDENT: You agree that we can adopt the formula used for the supported wage rather than wait for the Federal Commission, but if there is a variation we will have to consider the position then.

PN123

MR WATSON: Yes, I believe that is sensible, President. With those submissions in mind, if it pleases.

PN124

THE PRESIDENT: Thank you. Mr Pearce, please?

PN125

MR PEARCE: Thank you President and members of the bench, I intend to be brief. The State Government participated in the safety net review wages proceedings of the Federal Commission earlier this year and that participation was per the vehicle of a joint labour States and Territories submission central to which was the support for the \$20 increase. That proposed \$20 per week was a product of reasoning that deduced that such an amount represented an affordable and sustainable increase. This position was arrived at following consideration of prevailing and foreseeable economic circumstances and their effect on employment, together with consideration of the needs of the lowest paid workers.

PN126

The joint States and Territories considered that this position was vindicated by the subsequent decision of the Full Bench in their adjudication of the \$19 per week increase in award rates and to the Federal minimum wage. Since that time there have been the delivery of the State budget for 2004/05. In the budget speech delivered on 20 May this year the Treasurer stated in part and by reference to immediate past economic performance that it was:

PN127

An economic performance highlighted by record levels of private investment, record levels of employment, record tourist arrivals, two credit upgrades, the lowest unemployment rate for 20 years, business confidence at record or near record levels and record population.

PN128

In concluding his budget speech the Treasurer stated:

PN129

It is a budget that confirms our economy is stronger than it has ever been.

PN130

Members of the bench, in the context of your deliberations under section 36 of the Act those particular quotations in this submission represent solid affirmation that the application to flow on the terms of the Federal decision satisfies the public interest test. In conclusion and importantly the Government acknowledges and welcomes once again the level of agreement that prevails between the Council and the Chamber. It is an enviable position and one that constitutes evidence of a continuing constructive and responsible approach to the settlement of issues. Finally we submit that the Commission give effect to the terms of the application and in so doing ensure that the continuing relevance of principle 4 of the award safety net. If it pleases the Commission.

PN131

THE PRESIDENT: Thank you. Mr Russell, did you wish to add anything?

PN132

MR RUSSELL: Thank you, President. I would submit that we endorse the submission given by Ms Fitzgerald.

PN133

THE PRESIDENT: Thank you. Mr Russell, no submission? Right. Nothing in response, Ms Fitzgerald? Nothing much you can say is there? All right. We certainly acknowledge the agreement of the parties and the three applications before us. By consent private sector awards of the Commission will be varied to give effect to the safety net decision and work-related allowances, the supported wage variation in accord with the recognised formula subject to any changes that the Federal Commission may make to that. And to meal allowances. The variations will all take effect from the first pay period on or after 1 August this year and orders will be issued prior to that date.

PN134

In respect to T11565 which is the application for bereavement leave, carers leave and parental leave the Commission will set a time and a date for a conference with the parties to see whether we can basically get the words right in respect to those applications. Thank you. On that basis this matter is adjourned.

ADJOURNED INDEFINITELY

[3.20pm]

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