TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 6284 of 1996

IN THE MATTER OF an application by the Tasmanian Chamber of Commerce and Industry Limited to review the Wage Fixing Principles in respect of private sector awards

re: the third arbitrated safety net adjustment, and Section 150A Review processes contained in Australian Industrial Relations Commission decision of 9 October 1995 (Print M5600) and parties and persons bound clauses

T No. 6305 of 1996

IN THE MATTER OF an application by the Tasmanian Trades and Labor Council to vary all private and public sector awards of the Commission to flow on to the jurisdication of the Tasmanian Industrial Commission the decision of the Australian Industrial Relations Commission contained in Print M5600

re: the Third Safety Net Adjustment and Section 150A Review, and to adjust appropriate allowances in awards of the Commission arising from the above decision and related arbitrated safety net adjustment decisions

T No. 6291 of 1996

IN THE MATTER OF an application by the Shop Distributive and Allied Employees Association, Tasmanian Branch to vary the Retail Trades Award

re: Clause 8 - Wage rates - Third $8.00 Safety Net Adjustment

T No. 6264 of 1996
T No. 6268 of 1996
T No. 6269 of 1996
T No. 6270 of 1996
T No. 6271 of 1996

IN THE MATTER OF an application by the Health Services Union of Australia, Tasmania No. 1 Branch to vary the Disability Service Providers Award, the Medical Diagnostic Services (Private Sector) Award, the Dentists Award, the Medical Practitioners (Private Sector) Award and the Hospitals Award respectively

re: the third $8.00 arbitrated safety net adjustment, consistent with principle 7.3.2 of the State Wage Fixing Principles handed down by the Tasmanian Industrial Commission in Matter T5214 of 1994

T No. 6263 of 1996

IN THE MATTER OF an application by the Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union to vary the Metal and Engineering Industry Award

re: Third $8.00 Safety Net Adjustment

PRESIDENT
DEPUTY PRESIDENT JOHNSON
COMMISSIONER WATLING

Hobart, 10 July 1996

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Before we proceed to take appearances I would like to note for the record that Deputy President Johnson is making his first, or taking his first action as Deputy President of this Commission, and we welcome to him that position and trust that he enjoys his work and gets on as well with his clients as he gets on with the rest of the commission. Thank you very much.

Well, we will proceed to take appearances.

MR R. WARWICK: If the commission pleases, I appear on behalf of the Tasmanian Trades and Labor Council in relation to all matters. I also have an authorisation this morning from the Australian Liquor, Hospitality and Miscellaneous Union, Tasmania Branch, and my name is WARWICK R.

PRESIDENT: What was that other - you're appearing for the -

MR WARWICK: The Australian Liquor, Hospitality and Miscellaneous Workers' Union.

PRESIDENT: Right. Okay, sorry, I didn't quite hear that. Yes.

MR WARWICK: And in relation to -

PRESIDENT: Yes, I didn't let you complete your name.

MR WARWICK: My surname is WARWICK, R, Mr President.

PRESIDENT: I apologise. Yes. Good.

MR WARWICK: And in relation to your comments, sir, we share your views on that. We can only live in hope, however, that at some stage the current minister might decide that in fact we are a relevant organisation for the purposes of industrial relations in Tasmania and we might actually be advised that there have been changes in the personnel of the commission at some stage. But we can only live in hope. Thank you.

PRESIDENT: I won't comment on that, Mr Warwick. Thank you for that.

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

PRESIDENT: Yes. Thanks, Mr Cooper.

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

PRESIDENT: Thanks, Mr Noonan.

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

PRESIDENT: Thanks, Mr Brown.

MRS S. STRUGNELL: If the commission pleases, SUE STRUGNELL, appearing for the Community and Public Sector Union.

PRESIDENT: Thank you, Mrs Strugnell.

MR D. STRICKLAND: If the commission pleases, appearing for the National Union of Workers, Tasmanian Branch.

PRESIDENT: Yes, Mr Strickland.

MR J. SWALLOW: SWALLOW J.E., appearing for the AMIEU, Tasmanian Branch.

PRESIDENT: Thank you, Mr Swallow.

MR P. BAKER: Sir, I appear on behalf of the Automotive, Food, Metals and Engineering Union, P. BAKER.

PRESIDENT: Thank you, Mr Baker.

MRS H. DOWD: If the commission pleases, I appear on behalf of the Australian Municipal and Administrative Clerical Services Union, DOWD H.J.

PRESIDENT: Thank you, Mrs Dowd. Is that being recorded on the system?

MONITOR: It is.

MR T. BENSON: If the commission pleases, BENSON T. I appear on behalf of the Construction, Forest and Mining and Energy Union, Tasmanian Branch.

PRESIDENT: Yes, thanks, Mr Benson.

MR W. FITZGERALD: Mr President, and members of the bench, I appear on behalf of the Tasmanian Chamber of Commerce and Industry, FITZGERALD W.J., and with me **MS J. THOMAS.** I also appear on behalf of the Hop Producers Association of Tasmania and the Metal Industry Association of Tasmania, and can I say, Mr President, on behalf of the Tasmanian Chamber of Commerce and Industry we welcome Deputy President Johnson in his first matter before this bench as Deputy President.

PRESIDENT: Very good. Thanks, Mr Fitzgerald.

MR FITZGERALD: And I appear in all matters, too.

PRESIDENT: Yes. Very good.

MR G. LUKE: If the commission pleases, LUKE G., appearing on behalf of the Printing and Allied Printing Industry Association of Australia, Tasmanian Region. In submitting this appearance I would also endorse the submissions to be put by the TCCI.

PRESIDENT: Okay. Thank you, Mr Luke.

MS L. LAWRENCE: If the commission pleases, LEANNE LAWRENCE, appearing for the Minister for Industrial Relations and on behalf of the Minister for Public Sector Administration. We'd also like to echo the sentiments put forward by our colleagues to welcome Deputy President Johnson.

PRESIDENT: Thank you, Ms Lawrence.

MR K. RICE: If the commission pleases, RICE K.J., I appear on behalf of the Tasmanian Farmers and Graziers Employers' Association and the Retail Trades

Association of Tasmania, and we also extend a warm welcome to Deputy President Johnson.

PRESIDENT: Very good. Thank you, Mr Rice.

MR I. MASSON: Appearing on behalf of the Australian Mines and Metals Association and also the Emu Bay Railway Company, Pasminco Metals, Pasminco Mining and TEMCO, MASSON I. I also echo the sentiments of the previous people who have welcomed Deputy President Johnson.

PRESIDENT: I am sorry, I missed your surname?

MR MASSON: MASSON I.

PRESIDENT: Masson. Yes. Thank you very much.

MR F. IRELAND: If the commission pleases, I appear on behalf of the Tasmanian Newsagents Association, IRELAND F., and I also endorse the welcome to Deputy President Johnson.

PRESIDENT: Very Good. Thank you, Mr Ireland.

Well, that concludes the taking of appearances. Is there any agreement between the parties as to the method in which these matters should be proceeded with? Has either party a view?

MR FITZGERALD: I understand so, sir, yes.

MR WARWICK: Indeed, Mr President, the circumstances are that the commission has moved particularly expeditiously to hear this matter, and we thank the commission for that, but as a consequence of the time frame we are operating under there are just one or two issues which we need to finalise with the Tasmanian Chamber of Commerce and Industry from our point of view, and I would seek to in my substantive submission outline those issues.

But the general process, we suggest is, that we should in a large measure run our cases and, in particular, in relation to those matters that are of consent, and then perhaps over the luncheon adjournment or some appropriate time today we'll perhaps have a further discussion in relation to one or two issues that we have not quite settled.

One of them in particular is simply on the basis that I haven't had an opportunity to put a proposal to the affiliated unions.

PRESIDENT: Yes. I guess I really didn't explain too well what I was seeking from you. Just to give you a bit of an indication, the bench has a view - depending on how the parties see it - of putting aside each of the particular award applications for the time being to hear the two major applications from the TTLC and the TCCI; make a decision in relation to those two major applications which would have then application to each of the specific award applications.

Now, are the parties happy to have those two matters - the two major matters - argued first or set the other award applications aside for the time being and maybe we can bring it back on later in the day.

MR WARWICK: Well, that latter course of action would probably be appropriate. I may be, Mr President, that some registered organisation may wish to put a view to you on that.

PRESIDENT: Yes.

MR WARWICK: Certainly, I think the question of the two flow-on applications need to be considered first and -

PRESIDENT: Yes, well that's the way we thought it might go, and I thought the parties might have sorted that out between themselves. Mr Fitzgerald, have you got a view on that?

MR FITZGERALD: If I could put our view, Mr President? Yes, we would agree wholeheartedly with your view that those matters should be determined first. In fact, we see it as a precondition on those other matters proceeding. So, yes, we would certainly endorse the bench's view.

PRESIDENT: Yes. Mr Cooper?

MR COOPER: Mr President, in respect to that position, it does seem eminently sensible. The only concern we would have is that if you are going to deal with those two major issues that some awards that we are party to are available for their third $8.00 on the 11th and, further, a majority of them are available on the 26th of this month, and we would have some concern that in dealing with those issues that any decision that is made would not delay the application of those $8.00 into those awards.

So I make those submissions in respect to that, but it does seem eminently sensible to deal with those two major applications first.

PRESIDENT: Yes. I can't give you any guarantees about what delay might flow, but obviously we are not in the business of trying to slow things down.

MR COOPER: I understand. I just thought it was appropriate to make those submissions, Mr President.

PRESIDENT: All right. Thanks, Mr Cooper. Yes, Mr Noonan?

MR NOONAN: Yes, Mr President, I am concerned in relation to our application in relation to the Retail Trades Award. If you believe that that will come on this afternoon I am quite happy with that but, again, I express Mr Cooper's concern that the Retail Trades Award is due for its third $8.00 wage increase from the first full pay period on or after tomorrow.

PRESIDENT: Yes. Look, I understand that, and we will do everything we can to expedite that matter, Mr Noonan, but I think the matter of principle has to be sorted out first.

All right, well who wishes to lead off with these two applications? Mr Warwick?

MR WARWICK: I have the opening bat, Mr President.

Mr President, members of the bench, we seek from you today the endorsement of our application to flow on the outcomes of a decision of the AIRC in the third safety-net adjustment and section 150A Review, Print M5600, and that was decision was from October 1995.

Mr President, and members of the bench, Mr Fitzgerald will be tabling a revised set of principles for your consideration during his submission, and we will be seeking leave towards the end of your considerations of these applications - we will be seeking leave to amend our application to incorporate those proposed principles for wage fixation.

If I may, I'd seek now to table an exhibit which goes to the question of a proposed award clause. There have been discussions -

PRESIDENT: Just before you go on, Mr Warwick, we might wait for it to be - have the other parties got copies?

MR WARWICK: They soon will have.

PRESIDENT: Yes. Very good. We'll mark the document TTLC.1.

MR WARWICK: This exhibit is a proposed award clause to be inserted into awards of the Tasmanian Industrial Commission at the time they are varied for the third safety net adjustment at an award level. There is a large measure of consent over this proposed award clause and there has been significant discussions in relation to it.

The clause endeavours to set in train a process that is similar to the section 150A process now under way in the federal jurisdiction, and I seek to - I think it would be appropriate if I read through the clause, Mr President.

PRESIDENT: Yes.

MR WARWICK: It reads, and I quote:

> *7A Commitment to Award Review*
>
> *(a) It is a term of this award that consistent with the decision of the Tasmanian Industrial Commission in Matter T. No. 6284 of 1996 that the parties to this award commit to review the award in the context of -*
>
> *(i) consistent award formatting;*
>
> *(ii) removal of discriminatory provisions;*
>
> *(iii) removal of obsolete or amendment of inaccurate award provisions;*
>
> *(iv) updating Clause 6 - Parties and Persons Bound;*
>
> *(v) rewriting of the award in plain English;*
>
> *(vi) the appropriate use of facilitative provisions;*
>
> *(vii) the inclusion of an appropriate enterprise flexibility clause.*
>
> *(b) Access to any further arbitrated safety net adjustments, however described, shall be contingent upon the Commission being satisfied that the parties have actively pursued the review set out in subclause (a) of this clause and may have established a timetable to finalise the review or to seek conciliation and/or arbitration to settle any outstanding issues.*

As I previously indicated, there are still two matters we wish to discuss with the TCCI at the luncheon adjournment or at some other appropriate time today. Our aim is to be able to report to you of full consent on these matters before the day is out.

The two matters still outstanding - these two matters are still outstanding probably because of the time frame we have been operating under.

The first goes to subclause (b) of the clause we have just tabled. In essence, affiliates have the view that the parties to awards at a federal level have had in excess of 12 months to deal with the matter of section 150A review process.

We wish to discuss with the TCCI a way in which we can be satisfied that unions will not be disadvantaged with respect to future wage rises that may be on offer.

More particularly, I can advise the commission that the ACTU wages committee is meeting as we speak and the expectation continues to be that what will be referred to as the `living wage claim' will be lodged by unions with the AIRC on or about the middle of July this year. That is, in the next few weeks.

The further expectation continues to be that these claims will be heard at the pace that national wage and safety net review claims have been heard in the past. The expectation is, therefore, that there will be a decision on these claims this year and not next year.

The second issue we still wish to discuss with the TCCI does not arise from the proposed clause 7A that's contained in Exhibit TTLC.1 but rather goes to the manner in which the adjustment of work-related allowances for the first and third safety net adjustments are to be dealt with.

I can report that I believe that the TTLC has a workable position with the TCCI on this issue, but I have not had an opportunity to seek the endorsement of all affiliated unions on the proposed approach, and I do need an opportunity to do that.

PRESIDENT: Does it look like being a fairly long-winded exercise?

MR WARWICK: Hopefully not.

PRESIDENT: I mean you're saying you'd have to contact all affiliates to seek consent?

MR WARWICK: No, no. All of the ones here today.

PRESIDENT: I see.

MR WARWICK: I seek now, Mr President, members of the bench, to turn to the decision of the Australian Industrial Relations Commission Print M5600, and I further seek to table that decision.

PRESIDENT: We'll mark this TTLC.2.

MR WARWICK: The first point I would seek to make is that we can all feel justified in relation to the path we took at the last time that the state principles were reviewed. In essence that path was to not adopt the AIRC principles in whole but to amend our own principles in light of, and because of the extensive - of extensive legislative change that had just been made to the Industrial Relations Act 1988.

The principles that have been place - been in place in this jurisdiction since 20 December 1994 have proven to be workable and effective. The document that Mr Fitzgerald will table in relation to the proposed revised principles will contain very few changes to the framework that is now in place.

Turning the third safety net and section 150A review decision proper, I propose that in asking you to adopt most of this decision the appropriate course of action would be for me to take you to certain relevant sections and points and make observations in relation to them.

The first of those points is on page 14, where the federal commission raises the question at 2.3 of a Guide to the Review of Awards. And it goes on to explain that there has been a significant process of piloting and a great deal of consultation about how the section 150A Review process was to be conducted in that jurisdiction, and it also talks about what they call a resource book - a section 150A Resource Book - which subsequently became this document which is called 'Making Federal Awards Simpler', and I imagine the commission has seen this document.

I haven't made photocopies of it because it's in fact issued by the federal commission on a cost recovery basis and on - inside the first page it is has in very, very bold black letters 'Copyright, Commonwealth of Australia 1995'. And then it has on the following page the seal of the Commonwealth. And not having had an opportunity to discuss with the local registry whether or not this document might be copied, I've been somewhat judicious in not doing so.

However, we would submit that the document does appear to be a very, very useful resource book and will be useful to us all I think in relation to the course of action that we propose for the - well for the adoption of a new set of principles.

COMMISSIONER WATLING: So are you suggesting that the Tasmanian Industrial Commission should vary the format of all its awards along the lines of that document?

MR WARWICK: No, I'm not.

COMMISSIONER WATLING: Is this what the - the first point you're saying? What does it mean?

MR WARWICK: Well the award clause, I would submit, does not mean that we are required to adopt the federal approach to award formatting, and it is clearly open to the commission - this commission - to format awards in the manner it sees fit. However, the clause is asking that there be a debate, not only within the parties to awards but also a debate with the commission about how that formatting should be conducted and should proceed.

PRESIDENT: Well perhaps now is the right time, is it?

MR WARWICK: To submit a -

PRESIDENT: To have that debate.

MR WARWICK: To have that debate?

PRESIDENT: I mean otherwise it's going to leave it up to future members of the commission probably acting singly to hear the debate which would be - could lead us in to all sorts of difficulties.

MR WARWICK: Well, I'm fairly sure that the parties are not in a position to put to you a considered view about precisely what the format of awards should be.

PRESIDENT: Mm.

MR WARWICK: And I agree that it's probably not appropriate for a commissioner sitting alone to determine that. It might therefore be appropriate for the commission to decide - the commission as currently constituted - to decide in relation to matters before you that some sort of working party is appropriate.

COMMISSIONER WATLING: Is it - I must say it interests me because the point says consistent award formatting - I'd have to say my review of awards in other tribunals, Tasmania would have the most consistent award formatting .... of any state.

MR WARWICK: Well that should make it much easier for us to access the living wage claim when it comes to it, Mr Commissioner.

PRESIDENT: The big problem is, I think the suggestion that was in your submission, Mr Warwick, that the federal award formatting details which are in that compendium you referred to, would be different to what we currently apply.

MR WARWICK: I don't believe that I said that we should adopt what the -

PRESIDENT: Okay, well -

MR WARWICK: - what was contained in the federal decision. I said that it would be -

PRESIDENT: I mean, on the - on the -

MR WARWICK: - I said that I thought it would be useful in relation to all of the matters contained in the proposed 7A - a useful resource book, but certainly we don't regard ourselves as bound by and we don't believe the commission should. And that - I should say that that goes in relation to all of the submissions that I'll make as I go through the document.

PRESIDENT: Okay. Thank you.

DEPUTY PRESIDENT JOHNSON: I suppose the summary of all that, Mr Warwick, is that what you're putting forward on behalf of those whom you represent, and as you understand TCCI's position is, that there is consent on the fact that there ought to be a review of the awards in this jurisdiction.

MR WARWICK: Yes.

DEPUTY PRESIDENT JOHNSON: And that your reference to the guide mentioned on page 14 and 15 is just simply as a guide in that process.

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

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Warwick.

MR WARWICK: If I could refer you to page 16 where the first issue of substance arises in this decision, and that is the matter of discrimination. We will be asking you to endorse the process we propose in relation to the elimination of discrimination, and in particular, if I could refer you to page 19 at the bottom of that page where a model clause occurs, and I'd seek to read that - that model clause into - into transcript, and I quote:

> *1. It is the intention of the respondents to this award to achieve the principal object in section 3(g) of the Industrial Relations Act 1988 by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.*

2. Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.

3. Nothing in this clause is to be taken to affect:

3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;

3.2 until 22 June 1997, the payment of different wages for employees who have not reached a particular age;

3.3 an employee, employer or registered organisation, pursuing matters of discrimination in any state or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission; or

3.4 the exemptions in sections 1170F(2) and (3) of the Act.

I end that quote and I'd simply state that it is manifestly evident that we could not adopt that clause as it is, but none-the-less we will be seeking to have included in awards for the Tasmanian Industrial Commission, a clause of similar intent and effect but one which is consistent with Tasmanian law.

PRESIDENT: Have you provided - have you worked on a draft?

MR WARWICK: Not as yet.

PRESIDENT: No. Do you intend to?

MR WARWICK: Well the - the thrust of TTLC.1, Mr President, is really to set in train this process of review and debate. It is not about endeavouring to finalise those matters at the outset, and indeed, it's never been the position of the TCCI in our discussions with them that unions would be expected to actually complete those objectives prior to the third safety net adjustment being included in awards. And in fact the inclusion of this clause is the beginning of the process and the clause is to be included at the time that the awards are varied for the third safety net adjustment.

PRESIDENT: Yes. Yes.

MR WARWICK: So we would -

PRESIDENT: Then how would you see the process developing? I mean, to say, let's take the anti discrimination clause as an example - how would you see that finally being determined and inserted in awards?

MR WARWICK: We would need an opportunity, Mr President -

PRESIDENT: A continuation of this full bench?

MR WARWICK: Pardon?

PRESIDENT: A continuation of this full bench?

MR WARWICK: Well, I'm not sure that that's not a matter for the commission, sir, rather than ourselves. This clause is also to be included in the principles, that's - that Mr Fitzgerald will table.

PRESIDENT: Which clause now?

MR WARWICK: The proposed - the clause in proposed TTLC.1.

PRESIDENT: Yes, yes.

MR WARWICK: So it will be there for future reference.

PRESIDENT: Yes.

MR WARWICK: And the commission, however constituted, in relation to the wage fixing principles in the future will have that clause there as a reference point for consideration.

PRESIDENT: Yes. Yes, I understand that.

MR WARWICK: Practically speaking, we would - we will be talking to the TCCI over the coming months in relation to each of these issues. The negotiation of model clauses will need to be conducted between our organisations in the first instance and then hopefully we'll come to the commission with a consent position on those -

PRESIDENT: All right.

MR WARWICK: - down the track.

If I could turn to page 21 where the issue of enterprise flexibility clauses is raised, and I seek to table a decision in relation to that.

PRESIDENT: We'll mark this exhibit TTLC.3.

MR WARWICK: The exhibit TTLC.2 at page 21 refers to this decision, where it says in the second paragraph under 2.4.2:

> *A model flexibility clause was subsequently considered by the commission in the Enterprise Flexibility Clauses Test Case decision [Print MO782] (the EFC decision). The key elements of that decision are as follows -*

- and they go on to point those out. And exhibit TTLC.3 is in fact that decision.

In relation to this issue we would again say that there needs to be discussion and consultation between unions and employers in this state prior to adjustments to awards being made as a consequence of this process. However, there is one issue that - or one or two issues that I think I should flag at this stage in relation to TTLC.3, and the first is on page 6 of the decision in the second paragraph, and here the commission - the federal commission is considering the proposition that was put by the ACTU that the legislative requirement that an enterprise flexibility clause refer to the no disadvantage test that's contained in the federal act, they actually were saying that that should be included in the model clause. And in fact the commission went on here to say that in essence that the no disadvantage test is a matter of law in the federal jurisdiction; it's in the act and there's no need to put in the clause.

We will certainly be discussing with the TCCI whether that approach is appropriate in this jurisdiction given the fact that in fact there is no disadvantage test. But I merely flag that with you at this stage.

And the other point that I would raise is on page 7 at subclause (f) of the model enterprise flexibility provision, and that provision says:

> *When this award is varied to give effect to an agreement made pursuant to this clause the variation shall become a schedule to this award and the variation shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.*

I simply say, in relation to that, I'm not sure whether or not we can actually do that in this jurisdiction. So we will certainly need to be discussing that particular aspect of the model clause. But as I say, I merely flag those as issues.

If I might move along, Mr President and members of the bench, there is a quote on page 24 that I think is worthy of note, and that's the second-last paragraph on that page:

> *We have decided that, at this stage, it is not appropriate to adopt the submissions of ACCI and other employer parties, which, in effect, require the model clause to be inserted in awards unless there is clear evidence to the contrary, or an existing clause provides for at least as much flexibility as the model clause. In our view, it would be premature to adopt such a course given the discussions which are currently taking place at the award level and given the avenue provided in the EFC decision for the arbitration of this issue in the absence of an agreement. It would also, in our view, be inconsistent with the Commission's obligations under the Act for it to pre-empt the outcome of these discussions.*

And I quote that section simply because I think that that is a proper and reasonable approach to dealing with enterprise flexibility clauses and would particularly ask the commission to adopt that approach.

Turning to the next page, which is page 25, there is considerable discussion of facilitative provisions. There is an italicised definition of a facilitative provision which I won't read, but under that definition the commission does say that this definition was subsequently adopted by the commission in the Family Leave Test Case decision which provided for the introduction of a number of facilitative provisions.

There are some matters of substance however that this - the commission as constituted in this decision, and in this decision were decided upon and they begin in on page 27 and I think it is worthy of - they are worthy of some note. And on the third last paragraph, the commission says, and I quote:

> *In an effort to assist the award parties to reach agreement in relation to this issue we have decided to provide guidance about the nature and extent of facilitative provisions. We make six points in this regard.*

And I'll just briefly go through them:

> *First, at this stage the Commission intends to adopt an approach to the insertion of facilitative provisions into awards which reflects the fact that such clauses are*

self-executing. Facilitative provisions need to be distinguished from other mechanisms which may be used to introduce flexibility at the enterprise.

The second, at the bottom of the page is that:

- it follows from the definition of facilitative clauses which we have adopted (set out above) that such clauses should continue to protect employees while allowing appropriate flexibility for individual enterprises in the way an award clause is implemented.

And the third point that they - the commission makes is that:

- facilitative provisions should not be a device to avoid award obligations because the Commission is obliged to ensure, among other things that "employees are protected by awards that set fair and enforceable minimum wages and conditions of employment that are maintained at a relevant level".

We would say in relation to that, that while those particular words are not contained in the Industrial Relations Act 1984, the construction of the act by way of common rule awards and enforceable minimums is very similar in intent and the approach set out in the third point is appropriate for the jurisdiction of this commission.

At the bottom of the page, the commission goes on to say:

In essence facilitative provisions should require a majority decision to introduce a particular form of flexibility which may then be utilised by agreement between the employer and the individual employees.

Once a majority decision has been taken its terms should, in order to provide a record of them, be set out in the time and wages records kept in accordance with Industrial Relations Regulations.

I'm not too sure what really to say about that, Mr President, other than in the end it is for the commission to decide whether a similar approach is required in this jurisdiction.

PRESIDENT: When do we make that - when do we make that decision? As a result of this submission?

MR WARWICK: Well it's certainly open to you to do that.

PRESIDENT: So really, you are asking us to find on that point?

MR WARWICK: Well I know that business in Tasmania is concerned about the level of regulation that is required statute and what have you.

PRESIDENT: Well I mean our Industrial Relations Act requires time and other records to be kept - employment records to be kept. Are you saying it should be done in that manner?

MR WARWICK: It would certainly be useful, I think, for all parties if it were the case. It may be appropriate to hear from Mr Fitzgerald on that question.

PRESIDENT: I mean I don't know whether we could impose that as a matter of one our decisions - to impose that as law on somebody else.

MR WARWICK: Indeed.

PRESIDENT: I'll have to think about that.

MR WARWICK: I'll perhaps leave it for the time being, Mr President. The decision goes on on page 29 to talk about the involvement of unions, and at the bottom of the page it raises a fourth point about these provisions where they say:

> *- we do not propose to adopt the guideline proposed by the ACCI which requires award parties to include facilitative provisions in all award clauses affecting the organisation of work or efficiency of the business. In our view an award-by-award process is preferable as it allows the needs and circumstances of the enterprises and employees covered by the award to be properly taken into account in accordance with s.88A of the Act.*

We would submit that that is an appropriate approach for this jurisdiction as well.

The fifth point is contained in the - almost in the middle of page 30 where the commission says:

> *- facilitative provisions should be used to promote the efficient organisation of work at the enterprise level and to avoid the prescription of matters in unnecessary detail.*
>
> *The safeguards we have provided in relation to facilitative provision are intended to apply to applications to insert a facilitative provision into an award. They are not intended to automatically apply to existing facilitative provisions. A party wishing to vary an award provision to incorporate any of the protections we have referred to will bear the onus of establishing that such a protection is necessary in all the circumstances.*

And in conclusion to that section, we would submit that the fifth point, as with all of the ones preceding, are appropriate and we would ask that they be adopted.

In relation to page 31, where majority clauses are discussed, I would refer the commission to its previous decision in Matter T.5214 of 1994. It was a decision handed down on the 20th December 1994 and that in fact was the last time that the principles were reviewed, and I'd refer you in particular to page 25, where the commission said almost at the halfway mark on page 25, and I quote:

> *As to the question of majority clauses, we do not consider that, in the State's common rule award system, it is practical or desirable to require such a broad brush approach. We again note that the Structural Efficiency Principle contains the signal that in reviewing awards regard should be had for the possibility of updating and/or rationalising the list of parties to the awards. That option continues to be available to the parties.*

I end that quote, and we would submit that there is no reason to change the approach taken by the commission in the decision I have referred to, and indeed, the parties will not be asking me to change your decision today. And in that regard, we would formally ask you to not adopt section 2.4.4 of this decision.

If I might refer to page 34, section 2.4.5 - Updating Awards and Test Case Standards. There is a quote of particular relevance of page 35; it begins with the second paragraph, and it reads:

> *We have decided in accordance with s.150A(2)(a) of the Act that it is necessary to consider, where an award does not incorporate test case standards (or better), whether appropriate test case standards should be inserted in the award as part of the award review pursuant to s.150A of the Act. Examples of test case standards include those relating to: -*

- and it goes on to list some of the many test case standards that have been set, and concludes by saying:

> *We think that, consistent with s.150A(2)(a), the parties and the Commission should ensure that where test case standards are relevant to the operation of the award those standards are included.*

I end that quote.

We submit that given the construction of the Industrial Relations Act 1984, there is no need to adopt this approach. Under the State act, all parties are entitled to make applications and the commission is empowered to hear them. We submit that the flow-on of the Australian Industrial Relations Commission test case standards should continue occur on the basis of applications made by the parties.

So to the extent that this section, 2.4.5, is in - inconsistent with the approach we propose, we would ask you to not adopt that part of the decision before you.

PRESIDENT: So 2.4.5 is rejected so far as you're concerned in total?

MR WARWICK: Well I think in particular, that last paragraph.

PRESIDENT: Or just a part in relation to test case standards?

MR WARWICK: Pardon?

PRESIDENT: Or just a part in relation to test case standards?

MR WARWICK: Well in particular I think that sentence that I read out, we would ask you to not - that last sentence -

PRESIDENT: Yes.

MR WARWICK: - where they say:

> *- the commission should ensure that where test case standards are relevant to the operation of the award, those standards are included.*

We particularly ask you to not adopt that approach, and rather, it would be appropriate that the flow-on of test case standards continue to be by application. But, at the same time, we would not, under any circumstances, be suggesting to you that any party or registered organisation should be limited in their right to make application for test -

PRESIDENT: Well they couldn't.

MR WARWICK: - the flow-on of test case standards. Indeed. And we wouldn't suggest it.

Turning to page 36, the commission discusses the question of plain English which is one of those areas which we will be proposing be included in the principles and the model award clause that's contained in TTLC.1. There is a relevant section at the end of that passage on page 37 - the last two paragraphs. The commission says:

> *The 150A Resource Book contains material relevant to the expressing of awards in plain English.*
>
> *We have decided that the availability of the third award level arbitrated safety net adjustment will be subject to the test that where the s.150A review process has not been completed, discussions between the award parties are continuing with particular attention to expressing the award in plain English.*

We would submit that that is a logical and common sense approach other than the fact that we will not be asking you to make the third safety net adjustment contingent upon the terms set out in the decision.

Turning to Consistent Award Formatting, the - this relevant section states:

> *One of the deficiencies in an award specified in s.150A(2) of the Act is that an award is not structured in a way that is easy to understand as the subject matter allows [s.150A(2)(e)]. This matter was considered by central working (ii) which examined, among other things, consistent award formatting.*

The commission goes on on page 38 to set out four dot points in relation to what consistent award formatting involves. I won't go through those. There is a relevant statement at the very end of this section on page 39, where they - the full bench said:

> *The Commission has decided to adopt the working party's recommendations in relation to consistent award formatting and to encourage their implementation. Accordingly, the availability of the third award level arbitrated safety net adjustment will be subject to the test that, unless there are special circumstances warranting a different approach, the award is varied to complement consistent award formatting.*

And as I indicated earlier, Mr President, we would not object to a working party in this jurisdiction to address the consistent - the question of consistent award formatting. And in fact I'd perhaps even submit that there is no other logical way of dealing with the matter.

If I could turn to Obsolete Provisions, which appears in the middle of page 39; the first paragraph of that section reads:

> *Other deficiencies in an award which s.150A(2) of the Act specifies the Commission must take steps to remedy are that an award contains obsolete provisions or provisions that need updating .... and that an award prescribes matters in unnecessary detail [s.150A(2)(f)].*

On page 41 at the top of the page, the commission concludes:

We will adopt the definition of an obsolete provision proposed by the Commonwealth in these proceedings. That definition is:

> *An obsolete provision is a provision designed to cover circumstances that are no longer applicable.*

We have decided that the availability of the third award level arbitrated safety net adjustment will be subject to the test that where the s.150A review of the award has not been completed, discussions between the award parties are continuing with particular attention to the removal of obsolete provisions.

We endorse this approach and ask the commission to do - to do so also, other than the aspect that the third safety net adjustment shall be contingent upon this matter being quite so far down the track.

In relation to the next section, which is Enterprise Testing, the full bench this - discussion of this matter by saying:

In its September 1994 Review decision, the Commission referred to the importance of testing the relevance and suitability of awards at the enterprise level.

And on page 43, that section is concluded by the full bench saying at the top of the page:

The aim of enterprise testing of an award should be to develop and incorporate changes in the award that ensure that the award is suited to the efficient performance of work according to the needs of particular enterprises, while ensuring employees' interests are also properly taken into account.

We would ask you to not adopt the process set out in 2.4.9 in this jurisdiction. We would submit that it is not necessary for a number of reasons: one is, that Tasmania is a small place; the awards do not extend the length and breadth of the country; and if an award is inappropriate in the Tasmanian context, both employers and unions and the commission usually find out about it pretty quickly. And we don't see that there is great benefit to be had from sending questionnaires out to employees on these issues when, in fact, union officials and employer representatives talk with employers and workers every day of the week.

I'd also submit that this process would impinge upon the limited resources which are available to unions and employer organisations in Tasmania. Those limitations on resources arise because of economies of scale, and all things considered, Mr President, members of the bench, we believe we can meet the requirements of this section without having questionnaires conducting a review of this sort.

In relation to new and first awards, the section is fairly straightforward. It says that:

New and first awards made after the date of this decision should, to the extent appropriate, having regard to this decision:

- *contain the model anti-discrimination clause (as amended);*
- *contain an enterprise flexibility clause; and*

- *comply with the consistent award formatting approach.*

- and it goes on and lists a number of other matters. We endorse this approach and it will be appropriate to do all of those things but I'm not sure that we're in a position to make those a requirement from the date of decision of the commission in these proceedings, bearing in mind that we do not yet have an agreed model anti-discrimination clause or indeed an arbitrated one, if were to be the case. And so on and so forth.

The - perhaps the best way of dealing this - with this, Mr Commissioner, may be to defer it, Mr President and members of the bench, may be to defer it until the next time the principles are reviewed, or alternatively, to - it may be appropriate to give it a prospective date of operation - but I leave that in your hands.

PRESIDENT: You would effectively apply the conditions or principles would effectively apply anyway wouldn't they? Whatever we find would apply to any award being made post the principles.

MR WARWICK: Well, indeed the logic of that would be in thinking it through that clause 7A would have to go in to any new award in advance of wages and conditions and that would subsequently determine the nature of those.

PRESIDENT: Fix everything up anyway.

MR WARWICK: Yes - indeed. So on the basis of that, I think we'd be pretty comfortable with the fact that it's - that it will happen anyway, which is the point that you make.

If I might turn to 2.5, Section 151 Reviews which appears on page 43. This section goes to the legislative requirement in the federal jurisdiction that awards be made relevant and be kept up to date, and in fact that there is a fairly punitive approach in the federal act where circumstances arise where awards are redundant or no longer used and we ask you to not adopt this approach.

And our view is that there is a process for dealing with this matter under the Industrial Relations Act 1984. Awards can be rescinded on the application of the parties if they're not appropriate. This commission has the power to take action to ensure that its awards are relevant and we don't believe that it's appropriate for the commission to have quarterly reviews of its awards and apply the five year test that is set out in the federal jurisdiction.

And I might also say that there is probably a good reason for not - another good reason for not adopting this approach, and that is, that the awards of the Tasmanian Industrial Commission serve as something of a safety net in circumstances where - circumstances where federal awards expire - become redundant - and they can continue to be useful in that regard. So we would submit that the process set out there is not necessary in this jurisdiction.

I won't take you to the summary, but I will refer you to page 47 where the third arbitrated safety net adjustment is considered and this of course is the matter which is of most concern to workers and I'll endeavour to be brief. If I could refer you to page 61, there are two particularly relevant observations made by the commission in its conclusions on this section. The first is contained under 3.3.12 - Conclusion - on page 61, and I quote:

> *We have considered all that has been put to us in relation to the economy. There is no doubt that the economy is slowing from the very rapid rate of growth in*

1993/94. However, prospects for stable growth appear to us to remain strong. There is some concern on the inflation front and there clearly remains an external constraint on growth. Nonetheless, we are of the view, having regard to the nature of the third arbitrated safety net adjustment, that there are no economic circumstances warranting a change in our September 1994 Review decision concerning that adjustment.

The second passage which I'd seek to read into transcript is the second-last paragraph on page 61, and that reads:

Moreover, as we pointed out in the September 1994 Review decision, insofar as the impact on the economy is concerned it is "the aggregate of wage increases together with the aggregate of other measures including productivity which are important". The September 1994 Review decision ensured that there would be no double counting. The growth in enterprise bargaining detailed earlier in this decision and the absorption requirements we placed on the granting of the arbitrated safety net adjustments in the September 1994 Review decision means the economic impact of a third arbitrated safety net adjustment will be limited. We submit that these conclusions are relevant to Australia as a whole and therefore to Tasmania as well. And our understanding, Mr President and members of the bench, is that the parties are in agreement on this matter.

If I could refer you to page 63 and in particular to the third paragraph on that page. The commission said:

We confirm that the third arbitrated -

- sorry -

We confirm that the third award level arbitrated safety net adjustment, like the first and second award level arbitrated safety net adjustments, is intended to apply to all awards, both multi-employer and enterprise specific. We will amend the Arbitrated Safety Net Wage Adjustments provisions in the Statement of Principles accordingly. We also note that it is our intention that the award level arbitrated safety net adjustments are to apply to an award even where all relevant award employees are covered by an enterprise agreement.

That is of course an enterprise agreement within the context of the federal act. And we would submit that the proposed principles are consistent - the principles which Mr Fitzgerald will table are consistent with this finding.

The following page - page 64 - sets out the tests for the adjustment. We've indicated that we will be taking a somewhat different approach. On page 67 there is a relevant section that I would seek to bring to your attention, and that is, the first paragraph of text of the decision on that page where the commission said:

The tests specified above are those foreshadowed in the September 1994 Review decision with the addition at award level, of tests arising from these proceedings. Because the arbitrated safety net adjustment provided for is intended to maintain the relevance of the safety net of award wages it will be awarded without requiring cost offsets.

And we would submit that that is consistent with the approach that we are putting to you today.

There is debate from page 71 onwards in relation to the question of absorption, and indeed to the consideration of the High Court and the Industrial Court of Australia in relation to that matter. I don't believe there's any need to go to into detail in relation to those other than to say that we took last time a simpler approach in expressing the requirements for meeting the absorption test. Those - the approach we took has been appropriate. No-one's, I believe, been confused by that. There have been no disputes, and I think I can reasonably say, that that will continue to be the case.

PRESIDENT: Yes. I tender the comment that our approach is clearer than that that has been adopted in the federal system.

MR WARWICK: It certainly is as far as I'm concerned, Mr President.

If I could refer you to page 77, Mr President, members of the bench, and this is the last matter of substance that I wish to address you on in the decision, and that's the question of allowances. I think it would be appropriate for me to read this whole section.

> *In the August 1994 decision the Commission decided that the issue of adjusting allowances and service increments for monetary safety net increases would be determined in each case by the Full Bench dealing with the matter. The Commission also considered that a similar approach was appropriate with respect to the adjustment for monetary safety net increases of weekend penalties expressed as flat dollar amounts.*
>
> *In the September 1994 Review decision, with regard to the first $8 per week arbitrated safety net adjustment, the Commission noted that a decision was reserved with respect to the Retail and Wholesale Shop Employees (Australian Capital Territory) Award 1993 concerning the alteration for safety net adjustments of weekend penalties expressed as flat dollar amounts.*

And I'd pause there to indicate that that matter was also referred to in the principles of the Tasmanian commission at the time, and - and that reference continues to appear in our principles, but of course we will - we will be seeking to - to delete it and move on to address this question and resolve it. The quote continues:

> *In light of this, the Commission said that it did not propose to determine the issue of adjustment of allowances, service increments and weekend penalties expressed as flat dollar amounts for the first arbitrated safety net adjustment. Ultimately, however, the Retail and Wholesale Shop Employees (Australian Capital Territory) Award 1993 matter was resolved by consent. Accordingly, we have now decided that, where there is disagreement over the adjustment of allowances, service increments and weekend penalties expressed as flat dollar amounts for the first arbitrated safety net adjustment, the party seeking the adjustment must make application pursuant to s.107 of the Act.*
>
> *With respect to the second $8 per week arbitrated safety net adjustment the Commission in the September 1994 Review decision, decided that allowances, service increments and weekend penalties expressed as flat dollar amounts were to be adjusted for the second arbitrated safety net adjustment.*

We have decided that allowances, service increments and weekend penalties expressed as flat dollar amounts should similarly be adjusted for the third $8 per week arbitrated safety net adjustment.

In relation - I end that quote - and in relation to all of that, we would ask you to adopt this approach, but as previously indicated, the TTLC believes that it may have agreement with the TCCI on how these matters might be expedited in a practical sense, and that is what it is - that's the very thing that I would seek an opportunity to discuss with affiliates in the TCCI later today if the commission is agreeable to that course of action.

I won't go to the principles as set out, Mr President, members of the bench, because the document we will be proposing is not one that lifts the principles from the federal decision, but it continues to have a different - a set of principles with a different construction, and as I've indicated there will be limited alteration to the existing principles.

Mr President and members of the bench, there are a number of points to be made in conclusion. The first point is that there cannot be an overnight view of Tasmanian awards along the lines of the federal section 150A review. There will be a national wage claim arising from today's meeting of the ACTU in Melbourne, and we do require some time today to discuss this with Mr Fitzgerald.

The TCCI largely understands our view on this issue but we require a further and final discussion between the parties before we can present you with a consent position on this matter.

The second point is, that there is nothing fundamentally wrong with the wage fixing framework that the Tasmanian Industrial Commission now has in place. We are not proposing major change in that regard.

The third point to be made is, that we seek the earliest date possible for the endorsement of the principles we propose and we further seek the earliest date of effect for parties to awards who make application and provide the commission with draft orders in relation to the third safety net adjustment and to work related expenses.

The last point in conclusion is, that we flag now with the commission that if the next time the State Wage Fixing Principles are reviewed we will be addressing the time lag that is emerging between decisions of the Australian Industrial Relations Commission and the Tasmanian Industrial Commission in relation to general adjustments to wages.

In 1989, which was the first time that I personally had experience of flow-on of decisions in Tasmania, the expectation was that three to four weeks was an acceptable time lag for national wage case decisions between the jurisdictions. That time lag now appears to have blown out to three to four months. When the uptake of enterprise bargaining is considered, that time lag may well be far more serious from our point of view. I do -

PRESIDENT: Do you think you might have the remedy in your own hand?

MR WARWICK: Well I ask the commission to take particular note -

COMMISSIONER WATLING: That's bit a cheeky.

MR WARWICK: - of the fact that the view of the TTLC is that this expanding time between the dates of operation in the two jurisdictions is not the fault of the Tasmanian Industrial Commission, rather, it is all to do with the legislative change that is being imposed on the federal commission and the complexity of the decisions they have written as a consequence. So -

COMMISSIONER WATLING: But with due regard - like, this - this sort of application to vary the wage fixing principles and to take into consideration matters that happen in the federal arena, this application could have been made on the day of, or the day after that decision was handed down. And that decision was handed down in October '95.

MR WARWICK: I understand that but the question is the - in a practical sense, the question is the period of time that has to expire before the adjustments become available and that was said -

COMMISSIONER WATLING: Well the delay - the delay in this application is in fact delaying the application of the third $8.00 because there is a need to establish the new principles first.

MR WARWICK: Indeed.

COMMISSIONER WATLING: Well it's in your hands, I think.

MR WARWICK: I understand that entirely, and -

PRESIDENT: I just thought you were -

MR WARWICK: I thought I - I thought I made a very -

PRESIDENT: - you were suggesting that there was some deficiency in the way in which the matters were being addressed -

MR WARWICK: - I thought I made it very clear that -

PRESIDENT: - in the commission.

MR WARWICK: - I thought I made it very clear that it was not the fault of the Tasmanian Industrial Commission. I said that very clearly, Mr President.

PRESIDENT: Very good.

MR WARWICK: And in conclusion, and to pursue that point just a little further, in that context we flagged that next we will be looking at the extent to which enterprise bargaining has proceeded in this jurisdiction relative to others and we'll be looking at whether or not a time lag of any sort between the two is appropriate in all of the circumstances. In particular we will be looking at whether or not it is the case that culture of enterprise bargaining and the wage rises being endured by workers in other states are being realised in Tasmania and whether or not the Tasmanian principles should be amended to accommodate that fact. I conclude my submissions. Thank you.

PRESIDENT: All right, thanks, Mr Warwick. Mr Cooper?

MR COOPER: Mr President, I just - can I seek some clarification. I mean, Mr Warwick has made submissions in respect to a model clause and I just seek to understand from those submissions if that model clause is actually being proposed to be inserted in all awards by the TTLC. I'm a little confused on that because the application - the application by them seeks to flow on the principles into the

jurisdiction of the Tasmanian Commission and if that's - if that's broad enough to pick up TTLC.1, being an application to vary all private and public sector awards, I just seek some advice on that before I proceed.

PRESIDENT: Well perhaps Mr Warwick would respond before I do.

MR WARWICK: The proposal is, Mr President, that the principles would be amended to make it a requirement, that as awards are varied for the third safety net adjustment the clause, as proposed in TTLC.1, is inserted to awards. But for the conclusion to actually occur, there will have to be an application to vary the award for the third safety net adjustment, and in doing so the parties will have to include this clause. Thank you.

PRESIDENT: All right, does that help you, Mr Cooper?

MR COOPER: Yes, it does. I am somewhat clearer, but I was just sort of - I was reading the application and I spoke to Mr Warwick briefly about it and it does seek - seek to flow to the jurisdiction - the jurisdiction of this commission - the third safety net adjustment - section 150 review. It then goes on further to adjust allowances in awards. So the reference to awards in that application was to adjust allowances and there was no reference in the application to vary the awards - all nominated private and public sector awards. And I suppose in the submissions of Mr Warwick, that that application encompasses that, and if the commission is satisfied with that then I wish -

PRESIDENT: Yes, I think there's a lot to be worked out too, in terms of whether or not some agreement can be achieved which I think will clarify the point before the end of the day.

MR COOPER: I understand that, Mr President. We have some submissions to make in respect to that. The other point that I'd make is that Mr Warwick didn't tender a set of principles as I understand the TTLC - the TCCI are going to do that. So in terms of speaking to those principles I can only assume that I speak to the principles that we've received from the TCCI. It makes it a little bit awkward when you don't know exactly what is being sought.

PRESIDENT: Well look, do you - you can reserve your position until -

MR COOPER: Well I would like to that, Mr President, in terms of those principles -

PRESIDENT: - Mr Fitzgerald or - and the others have put their points of view.

MR COOPER: - because we haven't - we haven't actually seen the finished set of principles and we do have some submissions to make in terms of the draft that we received earlier especially in respect to some parts of that, I would say.

MR FITZGERALD: Mr President, just before you confer, I just wonder whether would be easier for the commission if we in fact table those set of principles now and allow Mr Cooper and others an opportunity to have a look at those.

PRESIDENT: Well I'll - what are you suggesting, an adjournment to allow them to consider that?

MR FITZGERALD: That would be sensible, yes.

PRESIDENT: All right, yes. Do you wish to tender those drafts now?

MR FITZGERALD: If we could formally tender those to the commission.

PRESIDENT: Yes. Okay. We'll mark this exhibit of yours, Mr Fitzgerald, TCCI.1, and I take it that everybody would be agreeable to adjourn for a period to allow consideration of it. Mr Cooper, what would you - how much time would you envisage? 20 minutes?

MR COOPER: I think that would be sufficient, Mr President.

PRESIDENT: 20 minutes. We'll adjourn for that time.

SHORT ADJOURNMENT

PRESIDENT: Mr Cooper, you were in full flight, but stalled.

MR COOPER: Well I - just warming - just warming up, Mr President.

Mr President, members of the bench, I would like to say thank you to the commission for allowing that adjournment. That did allow us to discuss with the TTLC and the TCCI Exhibit TCCI.1, and I must say that that document, from the advice we have received, does not appear to be a consent document and we are a little bit confused about some elements of that and we're certainly not in support of that document as it has been presented.

Now there's two ways we can deal with that I suppose. We can put our complaints or our concerns on the table and allow for the bench to consider those or we can seek those parties that have developed these principles to advise us, in terms of that document, just exactly what its status is in terms of an agreed document.

The concerns that we have are in respect to, if I can, the introduction - there's some changes intended in that introduction and they are bolded in the document that I do have. There are some further changes that have been sought throughout the document that I don't have a problem with until page 6 of the document and that 7.3.2.3 commitment to award review is somewhat at odds with the document that was tendered by the TTLC in TTLC.1 and we seek some clarification with respect to the level of agreement and/or otherwise in that clause that's set out in 7.3.2.3 and TTLC.1, and we would also seek - we have some problems with 9.1.2 and the reason we have those problems is that we were provided with that document from the TTLC last Thursday - sorry, TCCI - last Thursday and there has been some changes to that principle that we haven't had a chance to discuss with them and that change is basically the principles that have been amended seek to have a single commissioner sitting alone deal with the issue of allowances. I understand there is a process that is being sought by the parties to have allowances dealt with by way of exchange of letters and at this point in time, on the brief advice - brief time we've had, we don't think that's an appropriate course in terms of allowances. So there are a number of -

PRESIDENT: Is that - whereabouts is this?

MR COOPER: In - on page 8 of TCCI.1 -

PRESIDENT: Yes.

MR COOPER: - at 9.1.2 - there was, in the previous principles, a three other paragraphs that flowed after 9.1.2 and dealt with the issue of allowances and it reserved that first arbitrated safety net. It spelt out how the second would flow and then it said how it would be dealt with in the third one and that would be considered after the deliberations of the AIRC in August 1995.

PRESIDENT: Yes.

MR COOPER: So there's been some changes -

DEPUTY PRESIDENT JOHNSON: Didn't that item for the subject of some comments by Mr Warwick that it was a matter that still has to be settled between the principal parties?

MR COOPER: Well if it - I understand those submissions of Mr Warwick from the Labor Council and in terms of those submissions, if that part of the principles isn't going to be dealt with until at least we can have some consent on it, then obviously that would be deferred until an adjournment following Mr Fitzgerald's submissions. I would imagine that's how it's going to proceed.

So in terms of the position of my union, having considered the applications, we'd like to start basically from the principles that are currently in application, and we assume that the need for this full bench matter arises as a result of the paragraph that's contained in existing principles at 7.3 and that's on page 6 of the current principles, and what that says, in my copy, is that:

> *Providing the Commission does not decide otherwise as a consequence of the deliberations of the Australian Industrial Relations Commission in proceedings scheduled for August 1995:*

- and then it goes on and talks about the third arbitrated safety net adjustment, so I suppose the upshot of that provision is that both peak - the peak employer body and the peak union body have made applications for you to decide otherwise. Our principal submissions are that the existing principles should not be held up as a result of disagreement by the parties to the effect that they hold up a third $8.00 safety net adjustment in the State Commission, bearing in mind that the first $8.00 in this jurisdiction was awarded in T.4692 of 1993 which was dated the 24th of December 1993, and it was the expectation of this jurisdiction, along with the unions that were party and the employers, that over a period of time there would flow to employees under awards - subject to awards - they have - not been able to access an increase, $24.00 over that period. That now extends beyond 30 months so it's 2½ years and we believe that there should not - or one prime consideration for this full bench should be that there should not be any unnecessary delay in allowing those expectations of workers covered by state awards to access that third $8.00. And I make those principal submissions in respect to that issue.

Sir, we do have some things that we do - would like to say about the systems, and Mr Warwick has touched on that by taking the full bench through the principles of the federal jurisdiction, and I think - the important point that was made and resulted in the development of the current principles, is that there is a significant difference between the jurisdictions and those differences are quite stark and they're contained in several provisions of the act that I have copies of but I think I will just deal with rather than hand up, but there are a number of principles and conditions at law that are contained in the federal act that simply are not available in this jurisdiction, and one of the fundamentals is that in the Statement of Principles, that Attachment A, - now that was page 83 of my principles so I assume it would still be on TTLC.2 at page 83 - yes, it is that document, TTLC.2 at page 83 and he talks about, in the introduction:

> *The Industrial Relations Act 1998 (the Act) now provides for an industrial relations system which promotes enterprise bargaining about wages and conditions of employment within the framework of an award system, which provides a safety net of secure, relevant and consistent wages and conditions of*

employment. In both areas, the Act provides for the removal or prevention of specific forms of discrimination.

Now, it's in that context that the statement about the award system is made in the context of the Industrial Relations Act, but we see, in TCCI.1, especially under the Introduction the words taken from that sentence and included in the principles, and we would submit, taken out of context and placed in a different context in consideration of the provisions of the current State Act and the ability of the parties under that act to bargain and be protected in bargaining and I specifically mention in that that the federal system provides for protection for employees who bargain, whether they're members of a union or not, whereas this system, under Part IVA, provides for a minimum of - well it doesn't really even provide for any test. It provides for four minimum standards to examined by a commissioner and the main requirement is that the bargaining process is fair and those four minimums are met.

Now in that context it cannot be said, in the principles that have been submitted here today, that the process of enterprise bargaining in this state is conducted:

- within the framework of an award system, which provides a safety net of secure, relevant and consistent wages and conditions of employment.

- because the award system that we have is one that provides the common rule but under the enterprise bargaining system provided in IVA, it could be argued that that system could be undermined. So in that context, these principles that - members of the bench, these principles that are being put up are something that causes us some concern, especially in respect to that introduction.

The third paragraph that's contained there is word for word from the federal principles and you can see that that appears in about the fourth paragraph of page 83 and that paragraph again would be more consistent with our system, but again, in terms of bargaining - section 55, under Part V of the current act, the commission has admitted in proceedings of the second arbitrated safety net adjustment and in fact in proceedings in the principles when we dealt with the 2.5 principle, that is powers in terms of assisting the parties to bargain are quite limited under the act and whilst it can listen and hear a dispute, it does not have the same regulatory provisions that are provided for in the federal act. So in that context, the introduction to these principles are, we submit, is somewhat misleading.

PRESIDENT: Although enterprise - encouraging enterprise bargaining was a statement that was used in the introduction to the '94 state principles anyway.

MR COOPER: We understand that, Mr President. Submissions were made in respect to the variances in the system as well and we would equally seek to encourage enterprise bargaining because we think it's more appropriate for workers to receive increases above that of $24.00 over 30 months, and so we would equally support that submission.

But in respect to the application that's before us now, and especially in context of the submissions made by the TTLC, there are a number of things that I think need to be said, and I agree with the comments from the bench that it was open to the parties to make application to have these principles heard and determined well in advance of the timeframe that allows for the $8.00 to flow to awards - in fact we've taken that comment on board and we will be one union that will be seeking to have these matters heard well in advance of any future pay rises, and we make that submission to the bench in light of those comments.

So, in terms of the applications though, there are a number of things that do need to be said. My union, as a union of this jurisdiction, recognises the right of the peak bodies to communicate with one another, but we still understand that there's a fundamental right that's been expressed by this commission that parties seeking to vary the awards and flow on decisions should consult with parties that are the subject to awards prior to making those applications.

In terms of the TTLC application and those exhibits that were put this morning, we have not had an opportunity to speak to them, save and except some brief phone calls.

In terms of the TTLC - TCCI application, it must be said that that application was posted to us with a covering letter and a subsequent meeting did take place last week. In terms of that application, sir, members of the bench, that application seeks to vary all awards to insert a model clause and our position is that we are opposed to the insertion of that model clause because there are a number of provisions in that clause that we think should be discussed further by the parties before such a clause would be inserted in awards.

And in terms of state awards that we have, there are a number of state awards to which the AWU is the only party and I have - off the top of my head - listed them this morning while we were sitting here and there is the Clay and Mud, the Horticulturists, the Plant Nurseries, the Quarrymen, Shearing and Shellfish to name some of them to which the AWU is the only union that's party to those awards. Now, by virtue of the provisions of the act, the TCCI and the TTLC are party to those, but nonetheless, we don't think that gives those parties the right to seek to vary those awards without first considering the unions that are party to them and consulting with them on the impact of act variation. So we make that point to the bench as well, and we think it's important that that is considered in the context of this application.

Now, in the adjournment, I did discuss the intent of Mr Warwick's application and the TTLC clause and he advises me that it is not his intention to seek to vary awards in that manner other than to have that put in the principles and then on application by a party to insert the $8.00, then by virtue of having that in the principles that clause would then necessarily be in included in the awards. On that we have a number of things to say.

In terms of the formatting of the award, we believe that that is something that should be dealt with in a structured process and it's something that we think this full bench could deal with without impacting negatively on the rights of the unions to seek to have the $8.00 flowed on. That's clause (a)(i), consistent award formatting. Our submissions in respect to that would be that our experience is that the award of the state jurisdiction are some of the easiest awards that we've had the opportunity to be party to read and they are consistently formatted in any event, usually by agreement and usually as a result of a structural efficiency, 2.5 or otherwise and what we note and we would like to have on the record is that every time we come before the commission we are reminded that awards need to be in a consistent format, and that even goes to the numbering of the clauses - the first eight clauses in all state awards are the same - and they then tend to follow alphabetically, but in setting out the clause in terms of the Roman Numerals and the numbers that are used, we simply follow that, even down to the provisos that are included in awards. There's a consistent format that's provided in respect to that.

So we would say that while we don't oppose consistent award formatting, we don't believe it's appropriate that such a provision should be included in an award. We believe that that process should be dealt with by a process set down by this full bench of part of any decision that should flow and that process should include, we believe, something along lines as was proposed by the TCCI in that they suggested we have a conference in the first instance to at least talk the issues through, in terms of what

should be and shouldn't be in awards and how they should be set out. We don't believe it's appropriate to commit willy-nilly to a clause that would then say, well, don't know what this process means, but in any event it's in the award and you're going to follow it lock, stock and barrel. We think it would be more appropriate to have a process set up and we don't have a problem with that going in the principles, but we do object to it being in an award.

In terms of the removal of discriminatory provisions, we have something to say about that in terms of the federal decision, and the federal decision, again, relies heavily upon those parts of the act that give it the right to deal with discriminatory provisions as a matter of course and they are dealt with extensively in several sections of the federal act and they are dealt with in the context of an obligation that's being placed on the commission to observe certain things, and in terms of that, under the objectives of the act, Part 3, clause (g) clearly states that the commission:

> *The principal objective of this Act is to provide a framework for the prevention and settlement of industrial disputes which promotes the economic prosperity and welfare of the people of Australia by:*

- and at (g) it goes:

> *- helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.*

And those words are repeated at various places throughout the act under other sections where it says that the commission must require the parties to awards to observe those things. And we have no such provision in our act. The only part of our act in terms - that deal with that is limited. When it talks about an award it talks about an industrial matter and it talks about - at clause (a)(vii) of 3. Interpretation:

> *(vii) the employment or non- employment of persons of a particular sex or age; or*

- and in terms of looking at that clause, that is the only specific thing that sticks out as being a discriminatory provision. It does talk about modes in terms of employment, relations between employers and employees, and privileges, rights and functions employers and employees and it could be implied that that .... necessarily go to discrimination.

The terms of the discussions we've had with the TCCI, we said: well, to what extent does that discrimination provision meant to apply and basically the TCCI advised us that it was to go tidying up awards to include that there wasn't discrimination in terms of the language that's contained in awards, but didn't go so far as to include discrimination against younger workers on the basis of age. That was something that they would seek to continue with their pursuit of junior rates.

Now the federal decision talks about that as well, and in the context of that discrimination clause, provisions in the federal act talked about changing junior rates, at the time that that decision was made, in a timeframe of being 1997. Now obviously there's been changes afoot in respect to that provision with the change of government. But in any event, when we look at that clause itself, we just ask ourselves whether it would again be appropriate for that to be included in the award or whether it would be appropriate to have it somewhere else, and then let's talk about all the issues that are involved in discrimination and see how we can go about jointly removing those.

We support the concept that it should be removed but we do question under what context of the state act that would be of value, given the limited mention under the state act to discriminatory provisions and how that would -

PRESIDENT: So you support Mr Warwick's submissions really on that point?

MR COOPER: In respect to discrimination we don't support any form of discrimination, Mr President.

PRESIDENT: No, but I think Mr Warwick made the point that it might be contrary to our legislation.

MR COOPER: That's correct, he did make that submission, yes.

So in that context then you it in an award and one must ask themselves if it's going to go into an award, of what value would it be other than to say it would be of more value if it was under a set of rules that we should all follow because we may be able to effect better implementation of the objective than if we had it included in an award.

In terms of removal of obsolete or amendment of inaccurate award provisions, again, that is - that provision there is different to that that's contained in TCCI.1, but I understand there is agreement on that and in terms of that we would support the submissions made by Mr Warwick in terms of an obsolete provision of award should be first looked at in the award and the things that I understood were the target of such issues would be where awards have introduced a 38-hour week and had that 38-hour week phased in over a period of time and that date has since passed then that award provision becomes obsolete. Obviously we would not support the continuing of those clauses where they are absolutely redundant.

In terms of the amendment of inaccurate award provisions. We don't know whether that situation is one where the TCCI is seeking now, finally after several changes to the act, to have some provisions in awards removed. In any event, we'd seek to put to the bench that awards should be consistent. They should be consistent with the provision of the act and they should be consistent with the provisions of the agreement of the parties to the extent that they are conforming with the act. Again we don't see it as necessary to have such a provision included in an award. We think they should have a statement that says this is the intent of the parties and we should go down that track.

Updating clause 6 - Parties and Persons Bound. Again there is some confusion with respect to this clause. We have been subject to restructuring a number of awards where we simply continue flowing on the Clause 6 - Parties and Persons Bound when the problem arises not by virtue of clause 6 but by virtue of the other provisions contained in the act where a party who no longer has an interest in an award must make application to have their certificate changed.

So we support the intent, but we don't know to what extent that would be useful, given that it is really saying you need to tidy that clause up. But the provisions of the act that deal with it are other provisions in terms of registration of organisations where you have to actually write and have your certificate reissued - recalled and reissued - and that needs to be done by application.

Again we don't know that that necessarily will add anything to an award by being in there. It should more appropriately be contained, we believe, in a set of rules that we should all agree to follow.

In terms of rewriting the award in plain English there are a number of things that do need to be said about that, and the Federal Commission was quite clear in respect to

plain English that, in any event should we write an award in plain English we shouldn't by virtue of pursuing plain English simplify the award to the extent that it becomes unclear in its intent, and I think that is a very important point.

My union has certainly been party to change in federal awards to make them read in plain English only to have huge problems with interpretation because the language is that simple that it is open then to the parties to interpret it differently, and the difficulty that we have had in that in a number of awards that have become agreements of the Federal Commission is that they are agreements and they can't be varied until their life has ended or unless you make application to a full bench. So the problems in trying to do the right thing do become somewhat compounded.

In terms of that, the full bench of the Federal Commission mentioned that at page 36 of its decision, and I think it is important to elaborate on that point at 2.4.6 in the second paragraph, the penultimate sentence sets out that, `Using plain English does not mean sacrificing precision'. I think that's a very important point that needs to be borne out in pursuing a plain English award.

What we would suggest is that - similar to Mr Warwick - that the federal document making awards simple is a useful tool but, in any event, it is something that the parties themselves should agree on and it may even be that again we have a conference before the commission to establish what the views of the commission are in respect to plain English so that the parties can at least understand what's expected of them. In terms of the appropriate use of -

PRESIDENT: We'd try to make ourselves clear.

MR COOPER: I understand that, Mr President. I understand you'd do that, and we also do, but at the end of the day it is the people that are out there that use the awards that have to be able to understand what's in them, and for the sake of writing things simply one should not lose sight of what the full bench has said, and that is that precision should still be there.

So if a clause has to be verbose in order to make the point, then we think that that should necessarily be the case, and it may be that it could still be in easy to read terms but not necessarily meaning that it can be open to interpretation.

And, again, we suggest that that should be done in the context of clearly understanding what we are committing to as unions party to this review.

In terms of the appropriate use of facilitative provisions Mr Warwick made some useful points in terms of that. One point that we think should be made to the bench, and I think we are one out on this point, is that a number of facilitative provisions that we included in this part of the structural efficiency exercise was so facilitative that employees now say we have got enough flexibility in the award, we don't need to bargain, and under the state system it makes it very hard to encourage them to bargain unless you take action, and we are not one to be promoting that type of situation, but we do have to be mindful of the use of facilitative provisions and they are provisions in the award that generally allow for the regulation of conditions of employment between the parties - being the employer and the employee.

Some of those facilitative provisions that have been included do specifically state that there is a role for the union in administering and monitoring that. But, in any event, the objective is to have flexibility in the workplace through by agreements with the employer and the employee, and in that respect we don't really know what is meant by the appropriate use of that as evidence from a meeting that we had with the TCCI other than to say that they want to go back and have a look at them.

So we would suggest that we need to know clearly what we are letting ourselves in for in that respect, given that most awards that have structural efficiency in them do have facilitative provisions. In fact, they had to have them in to get up under the existing principles at that point in time.

At 7, the inclusion of the appropriate enterprise flexibility clause -

PRESIDENT: Did you want to comment on the majority provisions?

MR COOPER: Sir, in terms of the majority provision, that is not contained in Mr Warwick's exhibit TTLC.1, but it is included in TCCI.1 at 7A and I understand that it is not meant to be there and I would assume that Mr Fitzgerald will comment on that.

In any event, we are opposed to the inclusion of majority provisions, given the nature of the state act and given the common rule situation in terms of awards, and we would support Mr Warwick in respect. It is inappropriate to have majority provisions included in awards of this jurisdiction, and we support the submissions of the findings of the full bench in the previous wage decision in respect of that.

In conclusion of appropriate enterprise flexibility clauses I think Mr Warwick covered that point quite well, but again you have a decision of the Federal Commission which I think was tendered as an exhibit by Mr Warwick. That was TTLC.3. And we would say if we are going to review the appropriate enterprise flexibility clause my union would be reluctant to say we are going to do that and will put it into awards and if we don't do it we will be breaching awards, we would say that it would be more appropriate for that type of review to be included in the principles and for the bench to set down a time frame for that to happen and for the parties to be all given an opportunity to discuss that, not just the peak bodies who can by virtue of their rights under the act have those discussions and exclude other parties.

Sir, subclause (b) of that TTLC.1 we would suggest that the state jurisdiction has got itself a little bit out of kilter with the federal jurisdiction, and that is no fault of this bench or a bench of this commission. It is simply a matter that has been brought about by virtue, we would submit, in the main, as a result of the differences in the legislations that regulate the two parties - the state commission and the federal commission.

In respect to that then, this (b) commits the parties to not only putting all this in the award but having satisfied the commission that they must do all these things before they can access any further wage increases that will flow.

And, again, in terms of these words - I understand that these words aren't agreed either, and I understand there are some ``may' that have been left out in terms of this clause, and in terms of Mr Warwick's Exhibit TTLC.1, at (b) the word `may' in the third sentence is included but in the TCCI in (b) in the fourth sentence the word `may' has been omitted, and I understand that that was to be a matter that was agreed between the parties.

So, in any event, sir, we suggest again that it would be inappropriate for that to be included in an award, given that the parties should understand in terms of point (a)(i) to (vii) what they are actually letting themselves in for, what that all means, how is that going to be managed, what is the time frame for all of that, is there going to be full bench hearings to deal with issues such as the enterprise flexibility clause, do we need to do that given that it has been dealt with by the Federal Commission, do we deny ourselves an opportunity of having submissions made to that in respect of the state commission because someone else has dealt with it?

Those issues are issues of substance and they are issues that I think need to be dealt with by this full bench, and we would certainly seek some guidance from the bench in respect to all those issues.

Sir, another thing that is important in terms of the federal decision is that the Human Rights and Equal Opportunity Commission is mentioned extensively in the federal act as well and, again, the parties here don't have the same mention in our act on that provision, and I just think that's important - another important point to make in respect of the matters that are before us.

Mr Warwick touched on the economy in terms of the federal decision, and we would support that and say that in fact workers should be entitled to access the $8.00. It represents in real terms a drop in purchasing power, given the current inflation rate, and, in any event, we think it would be appropriate for all those workers to be at least given an opportunity to keep up in terms of a minimum rate.

In terms of absorption, we again say in support of Mr Warwick that the principle is one that should generally effect the objectives of the Federal Commission and I think of this state commission as well, that the objective of the $8.00 exercise is to give workers who haven't been able to access an increase - $24.00 over the life of the bargaining period are subject to the principles - and we think that that needs to be picked up by employers, that the objective of this exercise is to give to people who have not been able to otherwise access an increase, $24.00 over the period. And I think we would appreciate some comment from the bench in respect to that in any decision that was made.

Whilst we recognise the difficulties of absorption, we think it wouldn't be a problem to express the objective, and that is that the $8.00 should be paid to all workers. And, generally -

PRESIDENT: Well, of course that's what the bench determined in December '94, subject to a review following the Federal Commission's review.

MR COOPER: Yes, that is correct, and it's what the Federal Commission decided and basically what the High Court said, that they have a right to state their objectives.

So, in terms of this process, we would submit that there is no need to greatly modify the principles to allow the third $8.00 and subsequent allowances to flow.

We believe that the issue of allowances is something the parties hopefully will deal with at the break.

We did correspond with the TCCI on the issue of allowances, seeking to reach consent with them, and we don't have a response to that correspondence yet. We did that before we made any applications to vary our awards for the $8.00 and we did it on the basis of a federal decision and we did it hopefully on the basis that we would be able to reach agreement on what percentage of the trade rate would be used, whether it be 417.20, 24, 33 or 441.

Now, hopefully we will have agreement on that during the break, and if that is the case we think there should be included in the principles, as there isn't in TCCI.1, we think there should be included in the principles at the appropriate spot - I think it is Principle 9 - 9.1.2 - there should be an appropriate statement in those principles reflecting that. That it is the decision of this full bench to allow for allowances to move in accordance with the safety net adjustments for the first and third $8.00.

I think it would be appropriate to include that in the principles.

PRESIDENT: Would you repeat that last -

MR COOPER: We think it would be appropriate to insert in the principles that allowances subject to the first and third safety net adjustment should be moved, and that should be included in these principles.

In the existing principles under the third arbitrated safety net adjustment at 9.1.2 the commission specifically stated at the third paragraph that the second $8.00 arbitrated safety net adjustment allowances could be moved. It says:

> *However, in respect to the second $8.00 safety net adjustment allowances, service increments and weekend penalties expressed as flat dollar amounts are to be adjusted for the second $8.00 per week safety net adjustment.*

We think it would be appropriate into these principles a similar statement allowing for allowances to be moved for the first and third, because you have already dealt with the second and that was done on a consent basis, and I think -

PRESIDENT: And you think that we should then retrospectively deal with the first?

MR COOPER: No, I don't. No, I wouldn't seek that. I would seek that the first $8.00 should be available to the parties upon application, and that should be available as a result of deliberations of this full bench.

COMMISSIONER WATLING: And what basis would that be worked on?

MR COOPER: Well, that's what we are hoping we will reach agreement on at lunchtime, but we are hoping that the $8.00 will be a percentage of 417.20.

MR WARWICK: That's if the offer's still on the table.

MR COOPER: I don't know about that.

In terms of the application by the TCCI, obviously we haven't heard from them, other than a brief meeting we had and in terms of that position that's been adopted by them to include in awards the clause that has been sought and we seek to have - obviously during the course of these proceedings, clarification to the extent of agreement on that.

We asked them what their reasons were for including such a clause in awards and one of the major reasons that was advanced was, other than such it being the want of the TCCI, that it should be available to employers subject to the award -

MR FITZGERALD: Mr President, I just wonder whether it's appropriate for Mr Cooper to relay to the commission 'without prejudice' discussions. It will be for us to make submissions in respect of this matter and I suggest as it's appropriate in normal course in these proceedings, that the commission not entertain those 'without prejudice' discussions.

PRESIDENT: Yes, that's normally the case. Mr Cooper, if you could address what your major points are in relation to TCCI.1 and TTLC.1.

MR COOPER: In terms of that model clause, sir, we don't believe it's appropriate for that clause to be included. We have not been provided with any substantial reason for it to be included. The reasons we advance in respect to that which is contained at 7.3.23 and in TTLC.1 are that we don't believe that it's appropriate to have those provisions in awards. They are not necessary. The parties that can vary awards are

stated in the act. They are organisations of employees, organisations of employers for employers and obviously anybody that is subject to that act that can make application would verse themselves in terms of their obligations.

And we believe that it's inappropriate then to put in an award a whole range of things that commit parties to the awards to outcomes and to processes that still haven't been clearly understood, and in terms of the submissions made by Mr Warwick this morning, he obviously left it open for the bench to consider what would be appropriate in terms of a number of those issues. Now, those issues are a matter of substance - significant substance, and we don't believe that it's appropriate for that to be included in an award before the parties are fully aware of that means.

In any other sense, when you seek to vary an award by including a provision in it, that provision is usually quite clear and it has a purpose and that purpose is something that is then enforceable. I would just question what value this would add to an award by being included in them.

In terms of the principles then that have been tendered by the TCCI, we again make the comment that we don't believe the introduction is appropriate, given the difference in the two systems. We don't believe that it is appropriate to amend the principles in terms of the commitment to the award review by including in the awards those provisions. We do think it would be appropriate for us to have some advice from the bench in terms of obligations of the parties to these principles to do a number of things but again, we think that should be spelt out and we think that as a union party to some 36 awards of this commission, we should be given some instruction in terms of how we should proceed with that and what it all means.

In any event, the main point that we wish to make is that this review of the principles should not impact in any way as a deterrent for those employees that have been, through us, seeking to have their third arbitrated safety net flowed onto the awards. There is an expectation in the community that that will happen. That expectation has been set out basically as a result of a full bench decision in 1994 and I don't think it is necessarily open for the full bench to decide otherwise as it expressed in that decision, than to continue to pay the third $8.00 and then require the parties to come back and say: well, okay, now we are going to vary the principles and those principles will include these things. I think it is open for us to access the $8.00 consistent with the existing principles and that we don't necessarily need to go down the track of having awards varied and commitments given that aren't clearly spelt out or clearly understood.

So, in that respect, we would seek from the bench the opportunity to deal with the $8.00 applications that are before the commission. I understand there are some that have been scheduled today and others that are being made and available - or under the existing principles, available from the 11th and the majority available from 26 July and we would seek the support of the bench in respect to that.

PRESIDENT: All right. Thank you, Mr Cooper.

Well, I understand there'd be a number of other union organisations present who wish to make submissions. There's also, given the time, an opportunity for the parties to confer. Do you think you need more than, say, the normal period between now and 2.15 for the conferencing process, or should we just resume at 2.15 and commence to hear the other union organisations?

MR WARWICK: 2.15 is generally appropriate around the room, I think.

PRESIDENT: 2.15, and then move to hear other union representatives? Anyway, we'll hear your report-back at 2.15 and take it from there.

MR WARWICK: Indeed.

PRESIDENT: All right, we'll adjourn until then.

LUNCHEON ADJOURNMENT

PRESIDENT: Mr Warwick, are you to report progress?

MR WARWICK: Yes, indeed, Mr President. I'm pleased to be able to do that and I'd firstly seek to thank the commission for its indulgence in allowing us the opportunity to have discussions over the luncheon break.

In relation to the matters that have been discussed, I would like to report the following: we believe we have an understanding with the TCCI on the question of -

PRESIDENT: When you say `we', Mr Warwick, do you speak for the general membership of the union representation here?

MR WARWICK: I'm speaking for the TTLC and its affiliates.

PRESIDENT: All right. Okay. Yes, thanks?

MR WARWICK: We believe we have an understanding about some words that Mr Fitzgerald will be able to put on the record regarding the timing of the proposed review, relative to future claims and decisions and that understanding is satisfactory from our point of view and Mr Fitzgerald will be taking the opportunity to do that.

In relation to the question of allowances, again, we believe we have a workable arrangement in relation to how that will be proceed in respect of the private sector and we propose to exchange letters either this week or early next week on the machinery of how the relevant adjustments should be made and the position is that we believe that the principle put forward in TCCI.1 can accommodate that arrangement and the principle's therefore appropriate.

There are a number of other matters that I'd seek to put on the record. The first is in relation to the submissions of the TTLC this morning, particularly in relation to the various references to the federal decision. The parties certainly would not want the commission at this time to make pre-judgments about any of the issues contained in (i) to (vii). We are seeking to have an open book in relation to discussions between the parties on all of those questions. So, in that regard we would ask the commission to restrict its decision in relation to exhibit TCCI.1 and the matters listed (i) to (vii) at this stage.

PRESIDENT: So, just let me get that clear. You mean we are not to go to what might form the detail of any models or the way in which those items, (i) to (vii) are to be applied. We are only to consider the actual words in (i) to (vii). Is that what you mean?

MR WARWICK: That's an accurate position of the circumstance, Mr President. Bearing in mind also that both of the parties, in their applications, have asked the commission to endorse the broad brush approach of the federal decision.

PRESIDENT: All right.

MR WARWICK: I guess what that means is, please don't endorse the specifics at this stage.

COMMISSIONER WATLING: So, are you suggesting that it shouldn't appear in TCCI.1 as well?

MR WARWICK: I'm not with you, Mr Commissioner.

COMMISSIONER WATLING: Well, it appears in TCCI.1 at page 6, point 7.3.2.3.

MR WARWICK: Oh, no, that should appear. No, I'm referring to the federal decision and the specific matters contained in that decision, about how these things might be determined and implemented -

COMMISSIONER WATLING: Right.

MR WARWICK: - rather than the document of principles that's been presented. We are asking you to endorse the document of principles. Notwithstanding the fact that - I understand that Mr Fitzgerald is intending to amend the document and that will be done shortly.

PRESIDENT: So, effectively, you want - you're supporting the summary of items to be included but you don't want us, at this point, to delve into the way in which they should be applied?

MR WARWICK: Indeed. If the commission pleases.

We've also agreed to make it clear in relation to (iii) that our position is - and I understand that the - the amended words will be 'removal of obsolete' and -

COMMISSIONER WATLING: Which Roman numeral (iii) are you talking about?

MR WARWICK: Perhaps if I could refer you to TTLC.1.

COMMISSIONER WATLING: TTLC.1, right.

MR WARWICK: And I understand that TCCI.1 will be amended to incorporate this version. And in relation to (iii) our position is that this item will be broad enough to encompass matters such as whether or not a clause in an award is consistent with relevant legislation and that is the understanding of the parties.

PRESIDENT: Yes. All right. But you're not seeking to vary those words, you're just explaining them?

MR WARWICK: Yes.

PRESIDENT: Okay.

MR WARWICK: There remains only one matter, by way of report-back at this stage, and that is - there is, as the commission is aware, some disagreement about whether the proposed Clause 7A should be included in awards, and our view is that we have an agreement with the TCCI that that should occur and that it is appropriate, however if it is the case that others don't agree with that, then the commission with have to make a decision in relation to the issue.

PRESIDENT: At what point does Clause 7A get inserted, in your primary submission?

MR WARWICK: At the point of which the award is amended to include the $8.00 arbitrated safety net adjustment.

PRESIDENT: Yes. All right.

MR WARWICK: And one would presume also that there would be an application for allowances at that time as well.

As a final comment, Mr President, if it is the case that the commission has to make a determination on the question of whether Clause 7A is to be in awards or not, or whether it's to be included in the principles, we would ask that that decision be made as soon as is possible, bearing in mind that nothing can happen prior to that decision being made. If the commission pleases.

COMMISSIONER WATLING: Just one question, and I don't understand what is meant by Roman Numeral (iv) `updating Clause 6 - Parties and Persons Bound'. What's the intention of that? Do you mean - are you talking about drafting a new style of clause, or are your talking about the actual registered organisations that appear in that clause?

MR WARWICK: Well, I wouldn't want to prejudice any discussions by saying that it was one or the other, or - I'm sure it is open to the parties to discuss both. It is, most certainly, having the proper names of registered organisations, particularly as a consequence of amalgamations and so on and so forth. We haven't specifically discussed with the TCCI whether or not the clause as a whole needs an overhaul, and that is, the standard clause as a whole, but we would be prepared to discuss it.

COMMISSIONER WATLING: Well, there's already a full bench decision on it, isn't there? The actual clause, in the public sector - for the whole of the public sector.

MR WARWICK: Yes, in the public sector. If the commission pleases.

PRESIDENT: Yes, thanks, Mr Warwick. Mr Cooper?

MR COOPER: Mr President, I just seek clarification - I would report that we equally had meetings during the luncheon break. I won't go to the detail of those meetings, but I do need to report that we met with the government representative, we met with the TCCI and we met with the TTLC as part of a meeting with all parties. So, we participated in three of those meetings. I was a little bit confused - can I just seek clarification from the bench - in terms of clause - (a)(iii) that Mr Warwick mentioned. As I understand, the removal of obsolete - that stays as it is, but clause (viii) goes. Is that what was said? I missed that. I just seek clarification of what actually fell.

PRESIDENT: Clause what?

MR COOPER: In terms of the submissions made by Mr Warwick in terms of (a)(iii).

PRESIDENT: Yes, I know what you're saying. What's the reference to (viii)?

MR COOPER: I just seek clarification that was made. I missed it. I don't understand what reference was made to clause (iii) by Mr Warwick. I assume he meant in terms of clause (viii) in TCCI.1, but I just seek clarification of what those submissions actually did.

PRESIDENT: Do you feel in a position to respond to that, Mr Warwick?

MR WARWICK: The proposition we're discussing is that there will be an amendment to TCCI.1 which will replace the proposed Clause 7A with what's contained in TTLC.1.

MR COOPER: I see.

PRESIDENT: All right.

MR WARWICK: And the comments I made in relation to `amendment of inaccurate award provisions' - or the comment I made was, that that expression is broad enough to comprehend the notion of clauses that are not consistent with legislation.

MR COOPER: I thank the commission for its indulgence in respect to that.

In terms of report-back for the AWU, our position is that we have, I think, agreement on the allowances. The TCCI and TTLC have an arrangement there. However, our position is still the same in terms of the current principle that's contained in TCCI.1 and that is that we do not agree with that principle in terms of allowances.

The other point that I think needs to be said is in terms of a determination as to whether TTLC.1 and that part of the principles in TCCI.1 - I think it's 7.3.2.3, whether that is actually an award variation or whether it stays in the principle. That's something we would seek a determination of the bench on because our views in respect to that have not changed. We don't believe it's appropriate for that to be in an award.

In terms of - just one other thing, if I may, members of the bench - I did speak to a number of provisions in the act and during the break I actually spoke to some other people about that and I think it would be appropriate just to tender that. I don't intend to speak to it, but I have provided your associate with that and those provisions of the act were ones that I mentioned in my submissions that appear throughout the federal decision and they are basically spelt out on page 17 of that decision and also throughout it. I have taken the liberty of providing them to the bench for reference for the typists and the like. So, if I could just distribute that and reserve my right to speak to that later.

PRESIDENT: Yes, all right. We'll mark it AWU.1.

MR COOPER: Thank you, Mr President and members of the bench.

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

MR STRICKLAND: Thank you, Mr President and members of the bench. If I may start by altering my appearance and tendering a letter from Mr Swallow from the Meat Industries Employees Union. I'm appearing this afternoon on behalf of that organisation. Copies of that correspondence has been forwarded to the registrar. If the commission pleases.

PRESIDENT: Yes, we have a copy, thank you. Thanks for that, Mr Strickland.

MR STRICKLAND: Thank you, Mr President. Both the National Union of Workers and the Australasian Meat Industry Employees Union oppose the consent position being put by the TTLC and the TCCI on the basis that it makes mandatory the proposed Clause 7A to be inserted in awards before we are able access the third arbitrated safety net adjustment. There has been only limited discussion between our organisation and other principal parties to these proceedings today and we don't know exactly what the outcome of the insertion of that clause will mean for the future.

We understand that it is not intended in any way to delay the accessing of the third $8.00 safety net, but in reaching agreement or how far things need to be progressed before the unions would be in a position to make further application resulting from future national wage case decisions, we're unsure. We have no problem with that clause although its outcome's being contained in the principles but until such time as there a greater understanding, our organisation is not comfortable with that being inserted in the award. If the commission pleases.

PRESIDENT: Yes, thank you. Any other submissions from any employee organisation? Yes, Mr Noonan?

MR NOONAN: Thank you, Mr President and members of the bench. On 24 June 1996, the SDEA made an application before the Tasmania Industrial Commission. It was T6291 of 1996 for the third safety net adjustment of $8.00 for the Retail Trades Award. A draft order was prepared and provided to the Tasmanian Chamber of Commerce and Industry on Tuesday 2 July. Mr Edwards confirmed the new rates in that draft order on Friday 5 July.

Members of the bench, we have complied with 7.3.2, 7.3.2.1 and 7.3.2.2 of the principles of the 20 December 1994, T5214. At this point, I would just the members of the bench if they have received those draft orders. They were included in our application. I do have copies here that I can submit to the bench.

PRESIDENT: Do you think they're necessary at this point, Mr Noonan?

MR NOONAN: I do, Mr President.

PRESIDENT: All right. Well, tender them if you so wish. We'll mark this SDA.1.

MR NOONAN: At this point, Mr President, we ask that the bench grant the third safety net adjustment of $8.00 in the Retail Trades Award from the first full pay period to commence on or after 11 July. That time frame is exactly 12 months since the second safety net increase was granted.

PRESIDENT: Yes. You will appreciate the fact that we decided we'd put aside those applications pending hearing and determining the two major applications, Mr Noonan?

MR NOONAN: Yes. As I understand it, Mr President, you put them aside until this afternoon.

PRESIDENT: Well, to a later time, yes. Maybe this afternoon.

MR NOONAN: Well, as I understood it, Mr President, it was this afternoon.

PRESIDENT: Well, okay. You may have understood it that way, Mr Noonan, but that wasn't what was intended. Look, I understand your position. I don't know what the other members of the bench think about that, but I personally think we can't deal with the application right now.

MR NOONAN: Well, Mr President, I disagree with you there, but I'm sure you'll make that decision.

PRESIDENT: I know you'll be disappointed but there's not much we can do about it at this point for you, Mr Noonan.

COMMISSIONER WATLING: I suppose the real question is, Mr Noonan, we still haven't sorted out amongst the other parties as to whether - any pre-conditions before the $8.00 is granted. We still haven't got any agreement.

MR NOONAN: Yes. Well, Mr Commissioner, we're still operating under the guidelines, or the principles, as I outlined in my submission -

COMMISSIONER WATLING: I agree, but the parties - or at least two applications are invoking 7.3, the first paragraph.

MR NOONAN: And we support the position put by the TTLC as well there, so -

PRESIDENT: What is your position on the two major applications, Mr Noonan?

MR NOONAN: Well, I support the position put by the TTLC this afternoon, Mr President. As far as our organisation is concerned, we've done everything that we can possibly do in order to achieve this third increase of $8.00.

PRESIDENT: At the risk of causing a great brawl, I would suggest your order then ought to include the new subclause 7A -

MR NOONAN: Well, as I said -

PRESIDENT: - if you want to go down that track.

MR NOONAN: - we support the submissions put by the TTLC.

PRESIDENT: Yes, okay. Anyway, we really can't deal with your award application right now. Thank you. Any others speaking to the major application? Ms Strugnell?

MS STRUGNELL: If the commission pleases, on behalf of the Community and Public Sector Union, we're here to support the submission put by the TTLC and in so doing, would like to draw attention to the fact that in the public arena we have been undergoing a process of rationalising and modernising public awards since late last year and so far we have, by consent, with the government, achieved that in five awards let alone those that we are currently addressing in relation to the four streams award restructuring.

Just to support that, I would like to just quote to you from correspondence received by our union from Mr Clive Willingham, dated 24 November 1995, in relation to another matter and I quote:

> *That we are currently embarked upon a process of rationalising and modernising public sector state awards and that a number of our applications have already been heard and approved by the State Industrial Commission and a number are awaiting decision and/or hearing date.*

My submission is brief. Simply to say, that we have been embarking on a process in line with most of the principles outlined in TTLC.1 and we therefore the submissions made today. Thank you.

PRESIDENT: Just as a matter of interest, Ms Strugnell, could you tell us what award the public sector rely on the safety net provisions?

MS STRUGNELL: None. Thank you.

PRESIDENT: Okay. Thank you. Mr Baker?

MR BAKER: Thank you, sir. On behalf of the AMWU, I would like to present a very brief submission. As one of the principal private sector unions in Tasmania operating in the commission, I would like to say that my organisation, or the organisation I represent, fully supports the application and indeed the submissions that have been made by Mr Warwick, both this morning and indeed this afternoon. I should indicate to the commission that in fact as far as the opportunity to review and have a look at awards per se to which we are a respondent organisation, we've already commenced that process in our principal private sector award, namely the Metal and Engineering Industry Award, and indeed next Monday, before Commissioner Imlach, there is an application to review the current wages - or the wage clause in that award, as to make

that clause far more relevant to tie into some of the provisions which have grown somewhat like topsy over the last few years.

So, there is an indication as far as we are concerned that that is - we've already commenced that process and indeed as far as the formatting of the award is concerned, we have raised with Commissioner Imlach and indeed have already lodged an exhibit as to how we would see the formatting of awards of this commission into the future and I've done so just simply as a discussion paper. So indeed, we are active as far as that is concerned.Our Automotive Industries Award which is probably one of our other major private sector awards, we have already undertaken some very heavy rewriting of that award and - and indeed the first part of that application will be heard before the commission in the next few weeks. I might add though, that if this matter actually goes into the award, or indeed, into the principles themselves, it may give the TCCI a bit of a jog along, as I've been waiting for the TCCI to respond to my plain English award now for almost two years. So I'm looking forward to -

COMMISSIONER WATLING: They may not understand it.

MR BAKER: You may well be correct, sir, but I have been known to write fairly obscure paragraphs into awards, so I would commend the submissions made by Mr Warwick on behalf of the mainstream of the union movement in Tasmania. Thank you.

PRESIDENT: All right, thanks, Mr Baker. No other - Mr Brown.

MR BROWN: Mr President and the bench, just simply to say that the HSUA supports the submissions made by Mr Warwick. In particular, we support the TCCI.1 and subject to Mr Fitzgerald's submissions and the foreshadowed amendments ,we look forward to an agreement to be able to move on to putting our submissions on the $8.00 for our awards.

PRESIDENT: Just before you sit down, did you say TCCI.1?

MR BROWN: Sorry - TTLC.1.

PRESIDENT: Yes, okay. Very good.

MR FITZGERALD: Final?

PRESIDENT: Finally around to you, Mr Fitzgerald, -

MR FITZGERALD: It's a long way too - I just wanted -

PRESIDENT: - your application.

MR FITZGERALD: - yes - all good things come to those who wait. I'm wondering about sitting time; are you intending sit through to till -

PRESIDENT: Well how much longer do you think we've got to go?

MR FITZGERALD: Well it's a bit hard to predict. We have some exhibits and obviously we have Ms Lawrence to make some submissions on behalf of the government. I'd just like to get some indication of what the bench's plans in that regard.

PRESIDENT: Well we won't be sitting beyond five-ish.

MR FITZGERALD: I must admit I have an appointment at a quarter past five which I -

PRESIDENT: - and if it looks like we're going into another day it will some - a long time down the track.

MR FITZGERALD: That represents incentive to proceed with pace and see if we can complete the matter today.

As a formal first matter, Mr President, members of the bench -

PRESIDENT: Deputy President Johnson has just asked whether it mightn't be reasonable if you could provide us with a summary or a precis of what it is you're putting rather than if you had intended go into a full blown submissions.

MR FITZGERALD: At some time following this hearing you mean?

PRESIDENT: No, now.

DEPUTY PRESIDENT JOHNSON: No, no, no.

MR FITZGERALD: Oh -

PRESIDENT: Are you in a position to summarise?

MR FITZGERALD: It presents with some difficulty there.

PRESIDENT: Yes.

MR FITZGERALD: I think it's important that I address the issues. I'll attempt to abbreviate that as much as possible, but I think -

PRESIDENT: Well if you keep that in mind.

MR FITZGERALD: Yes, certainly - yes. Well as a -

PRESIDENT: It's been given a fairly good run already.

MR FITZGERALD: Yes, it has, but I suppose from the employer point of view it's important that that perspective also be - be given to the commission.

PRESIDENT: Yes, we understand that.

MR FITZGERALD: If I could - as a formal matter to get rid of some of these machinery matters, if I could seek to, as Mr Warwick has indicated, formally amend the principles which are contained in TCCI.1 and -

PRESIDENT: Yes.

MR FITZGERALD: - and substitute, as Mr Warwick has already indicated, the clause 7.3.2.3 by deleting that particular clause which appears there and replacing it with the clause in TTLC.1. I understand that is in fact the agreed clause, except for some unions which - particularly the AWU and the NUW and meat workers.

And also, if I could formally indicate on record the undertaking which we did - did give in the off-record discussions in respect to clause 7A(b), TCCI recognises that employees and employers in the federal jurisdiction have had some considerable time to undertake the section 150A review process, and it may in fact create a situation where employees and employers in the state jurisdiction are somewhat constrained by time.

We would recognise that that time factor is one of the matters which the commission should take into account. We don't believe that in any way diminishes the responsibilities of the parties to present evidence to the commission that the parties have actively pursued the matters contained within clause 7A(a). But we do also recognise that there is a vast difference of what has occurred federally and what could appear in the state jurisdiction depending on future wage claims made by the ACTU and the flow-on of those in this jurisdiction.

Mr President, members of the bench, we do appreciate the commission listing this matter at short notice but as Mr Warwick indicated it has presented some practical difficulties. I think they've been evidenced by the delays and we regret those delays this afternoon, but I think that's evidence of the shortness of time which we've had to progress this matter.

The TCCI as - however, as part of its application did coordinate meetings with the major employer groups and unions and I can indicate, apart from those matters of disagreement from the unions here today, there is in fact a consent application of course of all employer bodies represented here today and they of course can endorse that consent, and the Tasmanian Government and notably the recognised representative bodies of trade unions, that is, the Trades and Labour Council and submissions made by Mr Warwick would confirm that.

I'll be - and we have again, I think, recognised the difficulties with time frames - I've actually taken the trouble to take relevant excerpts from the federal commission decision and rather than present those, I think we'll just simply refer to those so that may shorten some of the times of handing out exhibits, but I will be referring to, and as Mr Warwick has indicated, it's a resource which TCCI has used extensively, and that is the publication making federal awards simpler and there are a number of exhibits which I'll present from that. We're not suggesting in any way we slavishly follow matters in that resource but we suggest in terms of this application it will provide guides to the parties.

PRESIDENT: You're not going to breach copyright?

MR FITZGERALD: I notice that - I think within the terms - I can't be certain of the terms of copyright, but if it's contained - if it's kept within this jurisdiction for those purposes I think I'd be submitting, sir, we'd be in the clear but I certainly wasn't going to take the risk of copying the whole lot as Mr Warwick refrained from doing.

COMMISSIONER WATLING: There is no truth in the rumour your organisation has got more money than his.

MR FITZGERALD: The approach taken by the TCCI in its application - and it was indeed the first application before the commission - is - as I said, is supported by most other parties in a general sense and mirrors that of the Australian Commission and other industrial tribunals, notably in South Australia, Western Australia and Queensland.

What the TCCI is seeking to do is simply obtain a commitment by each of the unions party to the award that they would follow through a process which will make awards of the Tasmanian jurisdictions relevant to individual work places which will properly underpin the enterprise bargaining process.

The TCCI's consultation process prior to this application being made, in my submission, is totally open. There are no hidden agendas. What you see is what's before you. It's consistent with the Australian Commission's approach in its decision Print M5600 - the October '95 decision and there are references - and again, I'm conscious of Deputy President Johnson's comment - there are references at page 69

and 70 which - which - which impose additional tests for the obtaining of the third safety net adjustments, and those matters relate particularly to those matters which are contained within our application.

So in a general sense it reflects those matters which were considered by not only the Australian Commission but also the industrial tribunals of South Australia, Western Australia and Queensland. And in fact if I could present an exhibit which is a statement from that full bench, and if I can just quote from that.

PRESIDENT: We'll mark this TCCI.2.

MR FITZGERALD: I'll wait for the parties to -

PRESIDENT: Yes, Mr Fitzgerald.

MR FITZGERALD: Yes - and at page 3 - and I quote the first complete paragraph headed the 'Third Safety Net Adjustment' and I quote:

> *As will be seen, we have not been persuaded to depart from our decision to include a Third Arbitrated Safety Net Adjustment provision in the Statement of Principles established in the September 1994 Review decision, but we have included new tests to which the availability of the adjustment will be subject at the award level.*

And I just simply say, Mr President and members of the bench, we're not seeking to do anything remarkably different by our application. And indeed, at page 7 - and excuse the ticks which appear there - at page 7, there appears those tests imposed or set out in a check list format.

Now we acknowledge that there is no legislative base in Tasmania similar to section 150A of the federal act. There is in fact, after researching this matter, similar provisions in South Australia and Queensland but what we're doing, Mr President, members of the bench, is that we are in fact by our application providing, if you like, a similar legislative base, although not providing that base of course, similar to what section 150A seeks to do in terms of reviewing the relevance of Tasmanian awards in much the same way as section 150A.

PRESIDENT: So, I mean, these provisions aren't inserted in the awards, they're simply a reference to section 150A for the purpose of conducting the review.

MR FITZGERALD: That's right. What - what has been relied on in the past is - and it's been referred to by Mr Cooper particularly - is reliance on the structural efficiency principle, and in our submission there has been somewhat of a cosmetic regard for that principle. That principle is not in the least onerous - not in any way onerous - in our view, nor does it require anything specific to be done in order to justify access to safety net increases, and in our submission it's relied upon less and less and its relevance in the current context of this decision is, at the best, questionable.

What the TCCI application is seeking to do is pick up those aspects from the Australian Commission's decision which are relevant to the Tasmanian industrial jurisdiction and also pick up aspects which are peculiar to this jurisdiction. For instance, the parties and persons bound clause - and I will come to these clauses in turn. So, if you like, we are attempting to, if I can use a phrase, 'Tasmanian-ise' the Australian Commission's decision.

For instance, in the case of - in the instance of the parties and persons bound clause, there has, I understand - and we'll be turning to it when you come to this exhibit on

this matter - a decision - or a new format in terms of the TAB Award which quite clearly sorts out the matter of interest and parties to award. And there have been a number of awards, in our submission - and again -

PRESIDENT: That's a model of the public sector one, isn't it?

MR FITZGERALD: I understand so, Mr President.

PRESIDENT: Yes.

MR FITZGERALD: And there have been a number of instances where awards have been restructured and recast and parties - union parties to awards have remained, when in the truest sense - and I understand this is a registration matter, but it's something which should be, in my submission, examined and one example I'd give of that - give of that instance is the Chemists Award has been restructured into the Photographic Industry Award and the Salaried Pharmacists Association - I'm not certain of the correct title there - remain a party to the Photographic Industry Award. Now, quite clearly, the relevance of that organisation being party to that award is, at best, questionable. So they are the sorts of things that which we -

PRESIDENT: But isn't that open to - already - to review?

MR FITZGERALD: It is, but I think -

PRESIDENT: I mean, an application can be made under section 65.

MR FITZGERALD: There's no doubt about that, but what our clause simply does, Mr President, is, if you like, advertise it to the parties that those - they are some of the matters which should be addressed as part of this process.

If I could turn particularly to TTLC.2 which is the decision, and, if you like, compare the award - the words - and I note Mr Cooper has some objections to those words in terms of our principles which we've proposed, the similarity is remarkably different. So at page 83 of the Statement of Principles -

PRESIDENT: Is that a possibility?

MR COOPER: Remarkably different.

MR WARWICK: Similarity is ....

PRESIDENT: Sorry, that was cheeky, Mr Fitzgerald -

MR FITZGERALD: I'm sorry.

PRESIDENT: - I won't pursue that.

MR FITZGERALD: - and if I could take - go to the first paragraph:

> *The Industrial Relations Act 1988 (the Act) now provides for an industrial relations system which promotes enterprise bargaining about wages and conditions of employment within the framework of an award system, which provides a safety net of secure, relevant and consistent wages and conditions of employment.*

And further - skip a couple of paragraphs:

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.

Now all we're seeking to do is - is transpose that within the Tasmanian jurisdiction. And I note Mr Cooper's objection, but I must admit I don't understand it.

It was acknowledged by the TTLC on the last occasion when this matter was before the bench in matter 5214 of 1994 - and I think I'll hand out an exhibit at this point - just an excerpt of transcript.

PRESIDENT: TCCI.3.

MR FITZGERALD: And there's a further exhibit, if I could, Mr President, hand to the commission in terms of the First Safety Net Adjustment, which is an excerpt of the current principles. I'd speak to the two together.

PRESIDENT: Yes. Will we join them, shall we?

MR FITZGERALD: I think it would be wise to , thank you, Mr President.

PRESIDENT: Pin them together mentally? Okay?

MR FITZGERALD: As you can see, if I can just continue talking to that - of them to the bench - some of the parties -

PRESIDENT: Yes.

MR FITZGERALD: - may not have received them, but I don't think there's any significant in terms of what I'm allowed to say. At point 7.3 of the current wage fixing principles, headed the 'Third Arbitrated Safety Net Adjustment', it says:

Providing the Commission does not decide otherwise as a consequence of the deliberations of the Australian Industrial Relations Commission in proceedings scheduled for August 1995: -

- and then it goes on. And Mr Bacon also - Mr Bacon, as he was then now Mr Bacon MHA, says at page 21 of that decision:

I thought it was a bit much to expect that to float past, but that really was - was something we had difficulty with, Mr President. I'm sure you're familiar with the way that the federal decision handles this which is really not to set out the third arbitrated safety net adjustment other than to say that they're going to review or relook at it in August 1995 and that there will be a third safety net adjustment, but they don't go to this detail. Again we - believe it was - we believed that - or rather on what we could agree this is the best we could come up with is a reflection of the fact that something may change at national level which no doubt from one or more of the parties involved here may well lead to them wanting to foresee a similar change in Tasmanian awards. So we did feel that some reference had to be made to it. Whether that's the appropriate words or not, we're not completely stuck on it or anything -

So quite clearly it was anticipated at that stage that the granting of the third safety net adjustment was very much dependent on how the Australian Commission would handle it. Quite clearly the commission - the Australian Commission - determined that there was nothing which would prevent it or which would persuade it, either industrially or economically, to move from that early decision. So that's the point we're at, at this - at this point now.

It will be our submission, Mr President, members of the bench, that there are no changes in the Tasmanian context, that is, either industrially or economically which would justify a change to that principle which is outlined in Principle 7.3.

In other words - and I will be presenting some economic detail - some very brief detail - to support that. There's nothing really would - has - in terms of circumstances, which would require the commission to review or change their earlier decision.

We - in terms of - and I'll just handle this point in terms of the need for an award clause or simply allowing the matter to be contained in the principle - the TCCI's approach is - and it's an agreed one - and I just stress that point that the Trades and Labor Council have in fact agreed to this approach - is that we believe that it requires an actual insertion of a new clause in each award of this jurisdiction.

The structural efficiency principle is incorporated in the wage fixing principles and is available to be accessed by the industrial parties but not necessarily those enterprises subject to the various awards.

What we're saying by the insertion - or the need to insert a particular clause is, that no longer is it relevant simply to rely on the structural efficiency principle or to have it tucked away, if I can put it that way, within the principles. And those principles really are only available to the industrial parties - or utilised by the industrial parties.

We're saying that - and we, if you like, are putting forward an advertisement to those users of the awards that there needs to be some changes in terms of the awards themselves. And here is what the parties are intending to do.

PRESIDENT: How - are you making a distinction between the users and the parties?

MR FITZGERALD: Yes, I am, Mr President. I think it's important that those people - and I give an example of that - in one area in which I'm involved is the Disability Service Providers Award - there is and has been, an indication from employers in the industry that's covered by that award that there are number of matters in terms of format, interpretation, general matters relating to the interpretation of the award which presents difficulties and require change.

Now what we're saying is, if this is inserted in the clause 7A, which we're suggesting, that that is much more manifest, if you like, to the parties and presents the impetus to drive that change.

PRESIDENT: To the parties.

MR FITZGERALD: To the parties.

PRESIDENT: As distinct from the users.

MR FITZGERALD: Well, to both, I'd suggest. Because - because the -

PRESIDENT: And I question - and the reason I ask the question is, you know, if you're making a - putting a provision in the award to do something, the users can't actually activate it, can they?

MR FITZGERALD: Well I submit they can, Mr President, because -

PRESIDENT: In what way?

MR FITZGERALD: By influencing those industrial parties who represent them to take action to effect those changes. And that's what we're seeking to do.

PRESIDENT: But I thought you were making the point earlier, that if the provision was there anyway, the parties would - would see it and do something anyway. Now wouldn't it be up to the parties representative of their constituents to go them and ask them what they want?

In our submission, such a clause - and I will attempt to complete the submissions in respect to this matter - and you will notice that it has a 7A - an `A' number, and I understand the commission's approach to `A' clauses, however we would see that once these matters are complete - and that is obviously for the parties to assess - that, in fact, the clause be removed because it will, in fact, be obsolete, and that will not in any way disturb the numerical sequencing of clauses thereafter.

In terms of the various components of clause 7A, and I'll attempt to be brief here also, in terms of consistent award formatting, I am not certain whether I agree with the comments made particularly by Mr Cooper about, if you like, the ideal state of Tasmanian jurisdiction or the awards of the Tasmanian jurisdiction.

Certainly there are a number which we have an involvement with and other unions have had - and unions have had an involvement with which certainly have been tidied up significantly. We acknowledge that. But there is - and there is - it seem to be the TEMCO Award which I will refer to later, presents a changed format to the traditional approach for the first eight clauses being standard and then alpha order thereafter, but it may be, and I just simply put it as high as that -

COMMISSIONER WATLING: You obviously haven't read the new order.

MR FITZGERALD: I'm sorry?

COMMISSIONER WATLING: You obviously haven't read the latest order.

MR COOPER: That's exactly right.

MR FITZGERALD: Which order is that, sorry?

COMMISSIONER WATLING: The TEMCO one.

MR COOPER: It was fixed.

MR FITZGERALD: Yes, I've referred to that. I understand that has changed its format, yes, but that's not reflective of other awards of the commission at the moment. It's - I understand it's actually grouped those provisions into like provisions like leave into one area and that's not necessarily the pattern of awards of the commission.

COMMISSIONER WATLING: You see, this is the question that I asked earlier this morning. Are we actually talking about format of awards or are we talking about the structure, and I see them as two different things. You're talking about format here. What do you really mean?

MR FITZGERALD: Well, I think that can be explained by reference to the Australian Commission there.

COMMISSIONER WATLING: Well, I see, for example, a clause that has all the different forms of leave grouped under a leave clause as dealing with the structure, not so much the format.

MR FITZGERALD: Yes. Well, no, I see that as format, Mr Commissioner Watling.

COMMISSIONER WATLING: Oh, right, fair enough.

MR FITZGERALD: We have a difference of view there, but if I could refer to page 38 of the Federal Commission's decision - the Australian Commission's decision - at page 38, and if I can quote:

Consistent award formatting involves determining award titles in a consistent way, the grouping of related items together (for example, grouping of provisions in relation to leave of absence such as sick leave, annual leave, jury service, etc., the logical listing of clauses and subclauses within each part and the adopting of a consistent system of numbering). The system provided by the working party is decimal numbering then letters then roman numerals, for example. Standardising wage clauses, classification wage groups and rates of pay appear together.

So I -

COMMISSIONER WATLING: Are you asking us to adopt that as a definition of format?

MR FITZGERALD: No, I am not, not necessarily,

COMMISSIONER WATLING: Right.

MR FITZGERALD: - but I think that certainly provides some useful guidance, Commissioner Watling, simply that.

COMMISSIONER WATLING: Right.

MR FITZGERALD: Now I am aware in the State commission that there is somewhat of a mixed approach. I know some particular commissioners have, in fact, adopted a standard approach but they're - without being critical of the commission, in my view there has been some differences of approach.

DEPUTY PRESIDENT JOHNSON: When you talk about formatting in this context, Mr Fitzgerald, who is the target, the users of the awards, those who apply the awards, or people like us who make them and perhaps in the sense of common rule jurisdictions own the awards?

MR FITZGERALD: I think, Mr Deputy President, it would apply to all. We are obviously seeking to see in place a system of consistent formatting which will benefit not only those who make the awards, being the commission and the parties, but also those who utilise the awards, so I think it will apply to all.

DEPUTY PRESIDENT JOHNSON: There are those who argue now that the awards in place in this commission are, to a very high extent, already consistently formatted.

MR FITZGERALD: Certainly I would concede that there is a consistent formatting in the terms of the first eight clauses and thereafter alpha order in many cases, but at the same time there are awards of this commission which don't follow that formatting, and I think it is important that the parties - particularly the commission - set itself on a consistent formatting path.

DEPUTY PRESIDENT JOHNSON: I don't want to take this too far, and perhaps I run that risk, but that's really why I ask who is the target. Are we providing awards for ourselves or should we be more appropriately directing our attention to providing awards of the type to which Mr Baker referred, an award that suits their needs and the needs of their members?

MR FITZGERALD: Well, I think there is a balance of view that can be taken for all of those. Obviously the importance is that these award documents, even though they have some legal enforceability - obviously legal enforceability - in my submission

should not be legal documents, meaning that they are working documents which should be able to be interpreted by the average worker and supervisor or manager at the workplace - the ultimate end user. That's the importance which we should be, in our submission, placing. Not so much on those who make them or those parties who might assist in making them.

DEPUTY PRESIDENT JOHNSON: That might be of course simplification and plain English, and I think that's the distinction that Commissioner Watling was making when he was talking about format.

MR FITZGERALD: Yes. I didn't quite understand the difference between format and structure. I saw those, with respect, being much the same.

As you are probably aware, the Australian Commission have set out in this process, pursuant to section 150A of the Federal Act and using a number of private awards including the Nurses Tasmanian Private Sector Award. It's interesting that that of course was previously an award coming out of this jurisdiction, and in most cases the nursing provisions of that award came out of the Hospitals Award.

The TEMCO Award which Commissioner Watling referred to may, and I simply put it as high as that, provide somewhat of a model. I am not suggesting that that be the model, but what is necessary - and I agree with Mr Warwick in his submissions I believe is , and I make this as a suggestion - that the President of this Commission may convene a conference or delegate one of the members of the commission to convene a conference to address this matter.

In terms of removal of discriminatory provisions. As we have seen by Mr Warwick's submissions this morning, the Australian Commission has taken the step of actually inserting a model anti-discrimination clause.

In our submission, the TCCI suggests that an easier and a more practical approach in the Tasmanian context is for the award parties to participate in ongoing discussions to identify discriminatory language terminology and provisions within awards and remove them, and we believe there are examples where we certainly would agree that where there are quite clearly blatant discriminatory provisions within awards in terms of language and terminology, et cetera, they should be removed, and we believe that is the process.

Now, if I could refer to page 20 and 21 of the federal decision - sorry, to shorten the .... we all know that is TTLC.2, and you'll see that the Federal Commission - the national wage bench had decided at the bottom of page 20, and I quote:

> *We have decided to provide the validity of the third award level arbitrated safety net adjustment will be subject to the tests:*
>
> - *that, unless there are special circumstances warranting a different approach the award is varied to insert the model anti-discrimination clauses (as amended;) and*
>
> - *that where the s.150A review of the award has not been completed, discussions between the award parties are to continue with particular attention to the removal of discrimination.*

So what we are seeking to do is no more than the Australian Commission. We are not seeking in any sense of the word to include the model anti-discrimination clause. In terms of clause -

PRESIDENT: Can you tell us precisely what you mean by it though? What sort of discrimination?

MR FITZGERALD: Well, there are references to `he', `she'. There are references to junior females in awards. It really does need to review all awards to ascertain that, but they are some of the examples.

PRESIDENT: My concern there is is the commission being asked to buy, in quotes, `a pig in a poke', not really knowing what people mean by the terms - what people understand by the terms?

MR FITZGERALD: I think in terms of the Federal Commission's principle - well, its dicta in terms of what discrimination means, it is quite clearly set out on page 18 of the Federal Commission's decision which defines discrimination. That's defined quite clearly in the Industrial Relations Act - the federal act - which is helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical and mental disability, et cetera, and I think that clearly sets it out, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: That's Mr Cooper's point, that that's based on a statutory enactment or several of them in the Commonwealth where there is no similar or like statutory enactments here.

Now I understand when you talk about gender discrimination, and I think the President and Commissioner Watling will know that, too, but after you leave that point it gets very difficult here because there is no overarching or umbrella legislation, and that's the point that Mr Cooper made.

MR FITZGERALD: Well, certainly there is a Sexual Discrimination Act which applies in Tasmania, Mr Deputy President Johnson.

DEPUTY PRESIDENT JOHNSON: Yes, but it doesn't have such a wide-reaching effect as the reference you have given us on page 18.

MR FITZGERALD: I understand the point you make, but it really is for the parties to consult in each individual award and identify those areas. We are asking no more than that, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: So does that mean then, if I once again use shorthand terms, that you are inviting this bench to deal with that matter the same as you did the formatting matter, that there should be a conference convened to address the matter, I think your words were?

MR FITZGERALD: That would be a sensible course.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Fitzgerald.

MR FITZGERALD: The next point I would like to make in respect to 7A(a)(iii), Removal of Obsolete or Amendment of Inaccurate Award Provisions.

Awards in, the TCCI's view, should be concise and only contain relevant clauses or those which are consistent with prevailing legislation. It is wrong, in our submission, for the commission to consolidate and sign an award incorporating previously unlawful provisions, and I refer particularly to those matters such as the deduction of union fees, right of entry preference, and I refer particularly to section 39(2) of the act which requires orders to be consistent with the act.

It is also, in my submission, misleading to award users for such provisions to exist in awards and be advised by organisations such as ours that such provisions are no longer valid.

COMMISSIONER WATLING: So, you might tell us, why hasn't your organisation -

MR FITZGERALD: Well I can understand that -

COMMISSIONER WATLING: - made application to remove them then?

MR FITZGERALD: - I was anticipating that question. Thanks, Commissioner Watling.

PRESIDENT: I'd be disappointed if you hadn't.

COMMISSIONER WATLING: Yes.

MR FITZGERALD: It certainly comes down to resources, Commissioner Watling, we would acknowledge that.

COMMISSIONER WATLING: Right, and you understand that the commission just doesn't have the right to take clauses out of awards without application?

COMMISSIONER WATLING: Right.

MR FITZGERALD: I understand that. It's up to the parties to make application.

COMMISSIONER WATLING: Good.

MR FITZGERALD: The commission can't raise matters of its own motion in that regard.

PRESIDENT: Well, why do you say it's our responsibility?

MR FITZGERALD: What we're doing - we're not saying it's your responsibility necessarily, Mr President. What we're saying is that there is now, given - if the commission adopts our submission and inserts clauses of this nature into awards - there is now a responsibility on the parties to ensure that those - and again, it's much more manifest. And again, I would suggest that it works both ways. It's not just on union parties, but also employer parties, to in fact do something about those provisions.

Now, I'm not making any excuses as to why that hasn't occurred but the fact is, it hasn't in many instances. It should have -

COMMISSIONER WATLING: You can do it now.

MR FITZGERALD: - it should have, and there is now, if you like, an incentive or the impetus there for the parties to really do something about those provisions. That it is - and we have queries out in our own organisation about, for instance, the deduction in union fees, where that may appear as a matter in an award, and in my submission, despite the act actually proscribing that as an industrial matter and I believe it's always been - never been an industrial matter because it pertains to relations between unions and employers.

COMMISSIONER WATLING: Are we talking about awards that have been restructured and that have undergone a review through the structural efficiency principle, and if we are and they still contain a provision relating to deduction of union dues, why didn't you do something about it then?

MR FITZGERALD: Well, I can't speak in respect of individual award cases because I haven't been across them, but I can only say in-

COMMISSIONER WATLING: I'd be very interested in the specifics when it comes to the deduction of union dues questions.

MR FITZGERALD: Well, I know in some areas - and I can only speak from one I know of recently - in the Disability Services Providers Award, which I was involved with in its reformatting and restructuring, that's one matter which we did delete by agreement. There may be other instances where that didn't occur and I can't provide specific answers as to why that didn't occur. It should have occurred, but I'm simply saying now -

COMMISSIONER WATLING: You haven't - so, you haven't any idea which awards still have deduction of union dues in them?

MR FITZGERALD: I couldn't provide that information - I can certainly do that for you, but I can't make that available right at this time.

COMMISSIONER WATLING: I'd be interested to know in due course.

MR FITZGERALD: But I'm aware of some certainly.

COMMISSIONER WATLING: Right.

MR FITZGERALD: It may not be a great number, Commissioner Watling, by any means but where they do exist - that doesn't in way suggest that we're - our position is to in any way change that practice which might occur at the enterprise level. That's a matter between the employer and the particular union involved in that site and if they wish to continue that, then that's a matter for them. We're not advocating that at all, that those arrangements necessarily change, but we are - and I just use that as an example but we are suggesting that where provisions ultra vires the act, then they in fact should come out of awards.

COMMISSIONER WATLING: During the award restructuring process, do you think you had any responsibility to raise those sorts of issues?

MR FITZGERALD: Well I - again it's a - I agree with you, and in many instances we would have, Commissioner Watling. Certainly, I do recall in some areas which I've been involved with, and I'm sure my colleagues as well, we did in fact raise those matters.

COMMISSIONER WATLING: Right. So, if you had the blessing of the wage fixing principles during that time, what's changed to give you extra power to do it this time?

MR FITZGERALD: I think what has changed, Commissioner Watling, is in fact, if you like, an added impetus to the attention the parties are giving to awards at a federal level and the way the awards are structured in terms of obsolete provisions, et cetera, and we see that that is the major factor which is pushing the change in Tasmania. There's just no valid reason why those provisions should exist in awards. They are confusing; they take up time and paper and that is a cost to the commission. If an award is consolidated with those clauses still there, it's obviously a cost to the commission, to society at large, or the community at large, and we don't see any good reason why it should exist by any means.

But I take your point and I do acknowledge that in some ways - in some instances, the TCCI may not have been as strong as it should have been in ensuring some of those

unlawful provisions were removed but there is now the impetus there, in my view, for all the parties to address those issues in a business like fashion.

But there are other provisions within awards which - and again, I speak from a general sense without presenting specific information, but I am aware of awards which - where the divisor's changed from 40 to 38 and the annual leave provision, for instance, hasn't changed. There still exists the 40-hour divisor and those sort of - which would have some impact on the amount of leave available and obviously in the case of employees, that would benefit the employee, in that case I give.

There are typographical mistakes, there are erroneous cross-referencing, and again I speak of the Disability Services Award, which I was recently involved in. Again, looking at some cross-referencing, there are clear examples where the wrong clauses were referred to or wrong pages and I think that's a matter which can be and should be quite easily fixed up.

At page 41 of the federal decision, which talks about the obsolete provision. It defines an obsolete provision. I thought that was fairly self-evident. But again, the commission ties that - and I will just quote from the paragraph below the shaded portion:

> *We have decided that the availability of the third award level arbitrated safety net adjustment will be subject to the test that, where the s.150A review of the award has not been completed, discussions between the award parties are continuing with particular attention to the removal of obsolete provisions.*

Again, the application of which we have made is in fact consistent with the Australian Commission's decision on this matter.

The parties and persons bound clause in awards, and I know this has been a particular thorn in the side and particularly Commissioner Watling has been well aware of, if you like, the inaccuracy of many of the parties and persons bound clauses in the awards and they seemed too confused and again, that's possibly the fault of the parties as well - confuse the matter of interest and parties bound.

I would, if I could, just make available the TAB or the Totalizator Agency Board Award which in fact does show that new format. I'll present also another exhibit - one I referred to earlier about the Photographic Award - in terms of - the Photographic Industry Award, in terms of the union party to that award.

In terms of time, just while that's being handed to the parties, I'm a little doubtful, particularly with -

PRESIDENT: I was thinking on that point. We'll - at around a quarter to five, we'll resolve ourselves into conference and try and find another day at fairly short notice for us to continue.

MR FITZGERALD: Thank you.

PRESIDENT: All right.

MR FITZGERALD: It might prevent somewhat of a problem given that I thought we would have completed and my diary is situated in my office but I can make some - need to make some phone calls.

PRESIDENT: We'll mark your TAB document, TCCI. - was it 4?

MR FITZGERALD: Thank you.

PRESIDENT: And the Photographic Industry one, TCCI.5.

MR FITZGERALD: Thank you. We're just missing one page of the Totalizator Agency Award. It goes on further. What I can undertake to do is in fact get that second page, but it does clearly separate out - and I'm not sure whose aware this was. I assume it's Commissioner Watling's. You've got two pages, have you? I'm sorry, I've only got one.

COMMISSIONER WATLING: Yes, we've got two pages.

PRESIDENT: Pages 4 and 5 we have.

MR FITZGERALD: Thank you. We're somewhat at a disadvantage, me only having page 4. As it can be clearly seen, the new format of award interest and parties bound is set out in clause 6 and that's something which we would encourage in respect to all awards. Again, that may not seek to change anything but in terms of clarifying the legal situations of award interests and parties and persons bound, that in fact does that.

The next exhibit was the Photographic Industry Award -

PRESIDENT: Sorry, just before you go any further - is that all you're seeking to really achieve with your reference to parties and persons bound?

MR FITZGERALD: No. There is, in respect to Photographic Industry Award, -

PRESIDENT: I -

MR FITZGERALD: - it does come to those parties which are, in my view, continue to be party to an award which - without any necessary relevant or practical interest. They may have a legal interest in terms of the award but, in our submission - and the Photographic Industry Award is a very good example of that, where you can see that the major party to that award is the National Union of Workers and also party to that award is the Salaried Pharmacists Association, Transport Workers' Union of Australia.

In our submission - and again, I acknowledge that it's a matter which can be handled in terms of the interest provisions of the act, but it's important, I think, to note that where the parties identify those parties who are no longer relevant to the award that action will be taken to initiate the rescinding of interest within the award and the -

COMMISSIONER WATLING: Well, if we can just follow that through. You can take action now. The situation is that the certificate of registration contains the Chemists Award, right, because as you know, this award was the Chemists Award.

MR FITZGERALD: It was.

COMMISSIONER WATLING: And they've got a certificate that says, the Chemists Award - they've got an interest in the Chemists Award. Now, because the title of the Chemists Award is changed, it would flow that they still have on their certificate the Chemists Award.

Now, you can take action tomorrow, if you like, to make application under the act to have those organisations resubmit their certificates and if you were successful, the Chemists Award will be removed from their certificate.

MR FITZGERALD: I understand that.

COMMISSIONER WATLING: It's in your - you've got control of it.

MR FITZGERALD: I understand that. Again, I think - I'm simply saying to Commissioner Watling that by reference to clause 7A again it's manifest to the parties and the parties will in fact do something about it and again it's - I'm referring to both parties - employer and employee parties. But they're - this may not be the best example I use, but there are other awards which quite clearly show union parties and maybe employer parties, in some instances -

COMMISSIONER WATLING: Well, I dealt with this matter and during the course of that hearing, Mr Jerry Hampton from the Pharmacy Guild told me that he was going to make application to have his name taken out and I'm still waiting, -

MR FITZGERALD: Yes.

COMMISSIONER WATLING: - so may be you want to contact him and tell him, -

MR FITZGERALD: Happy to do that.

COMMISSIONER WATLING: - as one of your colleagues, to do his homework and carry out what he promised the commission he would do during the course of hearing.

MR FITZGERALD: There would be a question, I would submit, as to the relevance of the Transport Workers' Union, for instance, to be party to that award.

COMMISSIONER WATLING: Right.

PRESIDENT: Make application.

MR FITZGERALD: But again, I just simply point it out that it's one of the matters which can be in fact handled and tackled by the parties and there is in fact a commitment to that by the insertion of such a clause.

In terms of plain English, Tasmanian awards and in fact awards in the federal - in other state commissions are not noted for their user friendliness and I suppose I'm self-critical about that by making that point but I'm referring - it's the discussion we had earlier on that in terms of awards and their expression, the important target, if you like - as I think Deputy President Johnson mentioned, is that it's workers at the work place and supervisors and managers at the work place as well. They're the ones who utilise the award and they're the ones who should be able to interpret it but, in my submission, and again, I suppose there is some self-critical aspect about this, there are a number of characteristics of awards of this commission, ambiguities, shoddy drafting, provisos to provisos, which is common, inconsistent numbering and lettering, inconsistent terms, such as public holidays and holidays with pay, in some awards, double negatives - every possible example of abuse and misuse of the English language, in my submission and I'm not suggesting that that is the case in every award, but there are some glaring examples of that. And it's important, I believe, that the parties in fact tackle that with those ultimate users in mind, in my submission.

If I can just hand up an example of one clause - this is the Clerical and Administrative Employees (Private Sector) Award.

PRESIDENT: TCCI.5 - 6 - TCCI.6.

MR FITZGERALD: If I could just continue my other submissions while it is being handed out. This is a pretty typical clause which is contained in many private sector awards relating to leave allowed before the due date and I take the comment made by Mr Cooper that it's not necessarily relevant just to simplify the language and leave the intent unclear, but there are a couple of commas in there but there are clauses which I've seem without any commas. That is one sentence if you in fact look at it, starting

from where leave has been granted, right down to holidays with pay and I'd submit that for an employee at the work place or a supervisor at the work place, or indeed a union or the TCCI or any other party trying to advise on it, it is in fact difficult and that's just one clause and there are many other examples similar to that and it's important, I believe, that plain English be utilised, as the federal commission has declared at page 36 of the federal decision.

Excuse me for just one moment.

And I think it might be a good point to stop at this particular sub-topic if I could. If I could hand this exhibit up.

PRESIDENT: TCCI.7.

MR FITZGERALD: If I could just make the point, that the Plain English definition is defined - and I won't read but it in the second paragraph of 2.4.6 and at `Plain English' and I can say it is clearly explained there what Plain English means. I hope it is at least.

And if I could refer also to another exhibit, which is the Resource Book that I referred to in my earlier part of my submissions, and again I just simply leave it to the commission - without referring to any particular aspect of this resource book, I just simply say that it's a guide which this commission could use in ensuring that it's awards are expressed in Plain English.

PRESIDENT: TCCI.8. This reminds me of the Federal Vice President McIntyre I think being welcomed in Sydney in 1993, or whenever it was. He's the person in the federal commission with the overall responsibility for plain English in awards and he read, at the time of his welcome, the paragraph from the act which required the commission to have regard to plain English and no-one could understand it.

MR FITZGERALD: .... I hope we do better than the commission in that regard - the federal commission.

But in my submission, I think it really is just an intent to commit the parties to the process of ensuring that clauses such as the one which I just presented to you, are expressed in a much clearer and precise way. We need to - and I think it's unfortunate the way awards generally develop. They have, in my submission, there's been a sprinkling of legalese and some very loose drafting, but I think we really do need to get rid of the legalese as much as we can. We all know that lawyers are famous for it and we all know that they charge by the word and I think the going rate for a hearing before mention is about $25.00, so if we can get some of those words out of awards and reduce it to plain English so that those users - ultimate users of the awards can clearly understand what their rights and obligations are then we are in a far better position, and that's the intent of the commitment which we seek by clause 7A in the awards.

As I mentioned before, I see that awards are quite clearly legally enforceable documents, but they should in themselves be legal documents. So, I'd seek to -

PRESIDENT: You've not concluded your submissions?

MR FITZGERALD: I'm nowhere near it, Mr President.

PRESIDENT: All right. Okay. Well, thanks for that, Mr Fitzgerald. We will now go off record and have a look at our diaries.

OFF THE RECORD

PRESIDENT: Yes, Mr Rice. We've elected to hear you now, to spare you the -

MR RICE: Trauma of travelling the Midlands.

PRESIDENT: Yes, to travel down the Midlands for five minutes on Monday morning early.

MR RICE: I do appreciate that, Mr President and members of the bench.

In matter 5214 of 1994, I did mention to the commission - that was the third - the second SNA, the parlous nature of the agricultural industries in Tasmania, but unfortunately - well, it saddens me to report that they've not improved and in some areas they have deteriorated.

Notwithstanding that, that the Tasmanian Farmers and Graziers Employers Association and the Retail Traders Association - perhaps I should say, support in general, the submissions made by the TCCI in respect of the principles and in fact we've had some preliminary discussions already with the AWU regarding the Farming and Fruitgrowing Award, even though that award is only some four years old. So, we have been looking at that.

In view of our support for the TCCI's submissions relating to the principles, it should be taken that we will not be offering argument opposing the flow-on of the third $8.00 arbitrated safety net adjustment. If it pleases the commission. I did better than five minutes, sir.

PRESIDENT: That was well done. Thank you, Mr Rice. No, there's valid -

MR RICE: I do appreciate your assistance in that matter, sir.

PRESIDENT: - the major points - you support the generality of the TCCI's submissions, but you don't oppose the flow-on of the $8.00.

MR RICE: Yes, sir. Thank you.

PRESIDENT: Thank you, very much. All right. Well, it's been a fairly hectic and long day. I think it's a good example to us all of the need for pre-hearing conferencing and even though you might not lay the blame at me for bringing the matter on too early for you, it still behoves everybody to do their best to achieve some form of agreement with their applications or even to consult before they make their applications.

Now, having said that, we will adjourn now until Monday morning at 9:30 am. - Monday the 15th.

HEARING ADJOURNED