



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. 8413 of 1999

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

T No. 8483 of 1999

IN THE MATTER OF an application by the Tasmanian Chamber of Commerce and Industry Limited to vary all State Awards and to review the Wage Fixing Principles in light of the Safety Net Review Wages 1999 (R1999) and the State Wage Case Application T No. 8413 of 1999 in accordance with Section 35(1)(d) of the Industrial Relations Act 1984

FULL BENCH:
PRESIDENT WESTWOOD
DEPUTY PRESIDENT JOHNSON
COMMISSIONER WATLING

HOBART, 31 May 2000
Continued from 9 May 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING RECOMMENCED 10.03am

PRESIDENT: Are there any changes in appearances? No? Well, on the last occasion we were together we adjourned on the basis that the parties would respond to each other and to the bench in respect to the question of paid rates.

The submissions of the minister, the employers and the employees have been received. Is there any further comment that needs to be made at this stage? Yes, Mr Watson?

MR WATSON: Thank you, Mr President. I think we understood that the purpose of the time frame between the last hearing and today was to make written submissions to the commission in relation to the issue of paid rates awards, and today was for the purposes of making comments, I suppose, of an explanatory nature or comments in relation to the submissions made of the other parties. We've addressed the issue of paid rates in our submission.

If you can just give me a couple of minutes just to recap where we've come from with this particular matter. In the State Wage Case of 1999, we made an application for a full review of the Wage Fixing Principles as part of the State Wage Case. That position was rejected by the bench.

The matter was reconvened on 7 April and we made the submission that this matter be dealt with in conjunction with the 2000 State Wage Case. That submission was rejected by the bench and a time frame was set by the bench in terms as per your decision following the hearing on 7 April, and that was for the parties to make written submissions to the bench as to whether or not the principles should be abolished or whether or not there should be changes and the reasons for those changes.

All parties did that and it was clear from the bench's direction that there would be a hearing on 9 May, not for further submissions to be made about new material but for explanatory comments to be made about each other's submissions and also for comments to be made in relation to the other submissions made. Now all parties complied with that.

On the last hearing there were certain comments made and a bit of an exchange with Commissioner Watling about the issue of paid rates awards and now I think that was certainly the catalyst for the direction from the bench to address the bench on the issue of paid rates awards.

All three submissions - obviously we've seen the government and the TTLC submissions and our submission as well - all, we believe, are as one on the issue of paid rates awards. They've all addressed the issue of paid rates awards and I think it's fair to say that all parties have

agreed that there is no jurisdiction in the Tasmanian Industrial Commission to make paid rates awards and therefore the issue of a paid rates award principle becomes a bit of a non-issue.

5 Now we would ask at this point in time that the bench rule today that any further submissions going to issues outside the narrow issue of paid rates awards be ruled out of order and outside of the time frame, and the principles established by the bench for dealing with this matter, and that you, after that, reserve and make your decision in relation to these proceedings. If it pleases.

10 PRESIDENT: Could I ask a couple of questions there of you, Mr Watson. If you don't - what are you saying about - or what do you mean by requiring the bench to rule the additional material put by the Trades and Labor Council as being out of order? What does that do to what the commission can find in respect of any of those matters that go to the principles that have been raised by the Trades and Labor Council?

15 MR WATSON: Well, we were certainly of the view at 7 April hearing that this matter should be dealt with, I suppose, in a proper manner and allowing parties plenty of time to address the issue and it was our original submission that it be done in conjunction with the State Wage Case. Now that was rejected and a tighter time frame was set, so we've met that, and we understood that on the last hearing on 9 May that all matters were addressed and all parties were given the opportunity to make their submissions in relation to their particular submissions on changes or no changes.

20 Now what I'm saying is that the TTLC submission has gone further than the brief that we received from the bench on the last occasion and they've sought to open up - in fact, they've sought to renege on a previously agreed position. They have sought to raise other issues, particularly in relation to special cases about varying it above and below the safety net, and we believe that if that is allowed to happen it's simply going to open the whole issue up again which is not what the original time frame was meant to do.

30 Now if the bench does allow that submission to proceed, then we'll come back on the next occasion with something else and then the other party will be given the chance to respond to what we've said, and then we'll come back with something else. It never ends. We believe that the bench did set the tight time frame for the purpose of concluding this matter and we've deliberately framed our latest submission in relation to paid rates awards simply on that issue and we believe that the TTLC's submission has gone a lot further than the bench's brief and that's what I'm saying, it's our submission to you that you should decide today that those submissions are outside the rules set down by the bench in these proceedings and that they should not be taken into consideration.

PRESIDENT: Yes, all right. Ms Fitzgerald?

MS FITZGERALD: Thank you. I think a couple of comments initially; as Mr Watson has said, there is agreement amongst the parties in terms of the issue of paid rates awards and I did in fact indicate that
5 to Mr Watson. I presume that's what he's referring to when he talks about agreement.

I was approached by Mr Watson and Mr Edwards to ask me what the TTLC's position was on the paid rates award issue and I indicated that at that stage we had considered the Act, we had considered the
10 commission's power to make awards, and our position was that the commission has a power under sections 33 and 34 and therefore doesn't have a power to make paid rates awards, and that was generally the gist of it.

I think in terms of our different approaches, they're explained by our
15 different earlier submissions. The TCCI quite clearly put up a proposal for a paid rates principle. We chose to not do that and when we looked at the issue of paid rates, we then had to look at the effect of removing reference to paid rates awards on the current principles, and that naturally and reasonably and necessarily took us to principle 13 and
20 principle 14, and I'd argue that what we have addressed in our submission are consequential matters that arise from removing reference to paid rates awards.

There was no agreement between the TCCI and ourselves to limit
25 submissions to the narrowness of the paid rates, purely and simply whether or not the commission has power to make paid rates awards.

I've said in our submission that we have addressed the questions that the bench raised, particularly the questions that Commissioner Watling raised in terms of what is a paid rates award, where is it defined, what does it mean, especially in the context of the award
30 making in the Tasmanian jurisdiction. So I don't think that we have gone beyond the question that was asked of us.

I'd make further comment in terms of the last hearing. There were some questions raised by the bench that I thought were useful in terms of the parties considering their submissions and the principles
35 more generally, and we haven't sought to overstep the mark, we've sought to address the issue of paid rates, but in the context of the implications of removing reference to paid rates awards on the principles as they currently stand. Thank you.

PRESIDENT: Yes, all right. Mr Willingham, do you have a view?

40 MR WILLINGHAM: Thank you, Mr President and members of the bench. Firstly, before I proceed I should perhaps ask if there's any questions arising from the minister's submission that you have of me?

PRESIDENT: No, I think we understand that submission, thanks, Mr Willingham.

MR WILLINGHAM: Thank you, Mr President. I might develop a slightly different path with the bench, if I may, in relation to the question or the issue raised by Mr Watson and responded to just now by Ms Fitzgerald.

Speaking from a personal perspective, doing the exercise on the paid rates award question highlighted for me anyway how dilatory perhaps I have been and I make no comment about others in relation to this question of the review of the principles. I think it's high time it was acknowledged that perhaps there has been too little attention paid to the effect of the principles and their general tenor by the parties who appear before the commission, and it's a worthwhile experience for me anyway, revisiting what I had done a long while ago.

My view is that having done that exercise - and subject of course to the bench accepting the submissions which have been made in relation to paid rates awards question - is that it in fact does very late in the day raise the question of all of the other Wage Fixing Principles.

If I could just remind the commission, in our submission we said that it's not simply a question of the capacity of the commission to make paid rates awards or principles going to paid rates awards, but if you re-examined the basics of the award-making powers of the commission, then you'd have to question what actually we mean by a minimum rates award, and the method by which awards of the commission may be varied and adjusted and the circumstances under which they may be varied or adjusted.

In my view, whilst I must keep saying, Mr President and members of the bench, that I think it's very late in the day to be bringing this kind of submission to the bench, it is, in my view, essential that having started the exercise in a roundabout fashion and after being put up to it by the bench on the last occasion, then the parties ought to have one more opportunity to conclude the exercise in a rigorous way. I don't think it's enough having started this exercise to address one issue fairly comprehensively and then perhaps leave all of the others left not having undergone that rigorous scrutiny.

In my submission then, Mr President and members of the bench, I would request that the bench adjourn this matter today, set a time frame for the parties to revisit the principles in their entirety, that the bench should insist that the submissions of the parties, or those that wish to make submissions, are in the commission's hands and the other parties' hands with at least five working days of the reconvening of this bench so that all parties have an opportunity not only to consider the submissions, but also to discuss them with those who wrote them in order that the possibility of some agreement might be reached on all or any of them, the bench reconvene to see if any

parties wish to make further submissions in relation to their written documents and then close for decision.

5 For my part - for the minister's part we'll certainly be looking to put out a submission going for the Wage Fixing Principles, and I should indicate to the commission that if my request of you finds favour with the bench, then we would be looking at issues such as the safety net. We will be looking at the current principles which talk about increases above or below the safety net. We would be looking at the standard hours principle. We would be looking at the work value principle in particular. We would be looking at the allowances principle and we would be looking at the new awards principle. We would also be looking to ensure that there is a mechanism in the principles which does not permit double-dipping for awards that are varied to reflect State Wage Case general increases flowing to employees who have received increases beyond that under the terms of registered agreements.

20 But that's how we see it, Mr President, as the best way to progress at this very, very late stage. And I know the bench - not only this bench but previous benches - have given the parties plenty of opportunity to conduct this exercise, but better late than never perhaps. If the commission pleases.

PRESIDENT: So could you repeat for me please, the time frame that you are proposing?

25 MR WILLINGHAM: Well, again I don't speak for others, Mr President, I speak for myself, but we could undertake to have our version of the principles to the commission and the parties by this time next week, that is, Wednesday of next week. I'm not sure in my own mind, I think that might be 7 June.

30 PRESIDENT: And then five clear days for discussion between the parties.

MR WILLINGHAM: Well, I'm assuming that other parties might be able to meet that time line also, but they would need to speak for themselves, and then perhaps the commission reconvene a week following that.

35 PRESIDENT: Yes, thanks very much for that, Mr Willingham. Do you want to respond in any way, Mr Watson?

MR WATSON: Not at this stage, Mr President, no.

MS FITZGERALD: May I?

PRESIDENT: Yes. Thanks.

MS FITZGERALD: The proposal that Mr Willingham has advanced and the time frame, we would certainly welcome the opportunity to make a further submission. It may well be a different submission to the one we've made. The issue of the paid rates did direct us to
5 particular principles and we did start to question the relevance and the content of those principles, and so I think we've begun some of that work in terms of more thoroughly looking at the principles and their relevance and application and assistance in the jurisdiction.

10 So I think we could possibly meet that time frame in terms of written submissions by next Wednesday and then I certainly would appreciate five clear working days to be able to consider each others submissions before returning here to make comment on others submissions. So I'd welcome that opportunity.

15 I think the last hearing we realised that there was an opportunity for ourselves and the bench to consider the relevance of the principles, what they were to achieve, what we wanted them to achieve, what they could achieve, and I think that was useful and fruitful and I think we'd be reluctant to not pursue that opportunity at this stage. Thank you.

PRESIDENT: All right. Yes, Mr Watson?

20 MR WATSON: Mr President, could we request that we have a ten minute adjournment to respond to the proposals that have been put to you today on the basis that this really is developing into what could be called a travelling circus. I mean it really is getting to the stage -

PRESIDENT: It's been travelling for about ten years.

25 MR WATSON: Well, maybe so, but I mean we made the original submission in these proceedings that it should be done not in a tight time frame but all parties be given plenty of opportunity. It was the TTLIC's submission that put a tight time frame on it and the bench accepted that. We've met the time frame and now you've got the
30 submission to say we want more time and let's adjourn it again. So could we please have the opportunity of a ten minute adjournment and come back and address you on the submissions made.

PRESIDENT: I'm sure you can. Yes, all right. Yes, Mr Willingham?

35 MR WILLINGHAM: Mr President, before looking at Mr Watson's adjournment and partially for his benefit, one of the things - one of my colleagues has just suggested is, that if you were minded to accept the proposition I have made for the written submissions to be made within a five day framework, it occurs to us that there may be some benefit within that second five day period, that is the period when the
40 submissions are received and before the commission reconvenes, for the parties perhaps to have a general conference with the bench where much good might be achieved. I mean rather than sort of to some extent having a bit of a hit and miss where we pitch our particular

positions and then have to debate them in the cross-fire of a commission proceeding, perhaps a conference with the commission members might bring about a great deal of resolution to all of the outstanding issues.

5 Just one comment in relation to Mr Watson, if I may, I'm not in any way seeking to criticise his comments and I certainly agree with him that the question of the Wage Fixing Principles as far as the parties have been concerned is a travelling circus, but that's not the bench's fault, it's our fault. My proposal is not presented to the bench in order
10 to be part of some polarised position between employers and employees, my position is one that I see as - it is a travelling circus and it has been a travelling circus, this is an opportunity to stop it travelling and stop it being a circus.

15 I can understand Mr Watson's frustration that the direction of his application seems to have been - gone on a different direction from that which he might have preferred, but I would hope that the TCCI might realise that at this very late stage some profoundly important issues - fundamental issues - are emerging and that everyone, everyone who is a party to proceedings before this commission, and
20 the commission itself, are going to be better served by having that little bit of extra time to give it the rigorous scrutiny that it really deserves and for so long has not been afforded.

25 So we've made the submission, Mr President, not to take sides with one of the major parties or the other, but because this is the way that we see this issue can be best resolved.

PRESIDENT: Yes, thanks for that. All right, well we'll adjourn for ten minutes, or you might let us know when you're ready to proceed, Mr Watson.

SHORT ADJOURNMENT 10.24am

30 **HEARING RESUMED 10.50am**

PRESIDENT: Mr Watson?

35 MR WATSON: Thank you for the opportunity of the adjournment, Mr President. Our application in relation to these matters was made at the time of the State Wage Case of 1999 and that application went to a fundamental total review of the Wage Fixing Principles.

40 At that point in time, the unions party to those proceedings decided against us on the basis that there were some suspicions that there may have been motivation to try and delay the State Wage Case proceedings. The commission ruled against us in those proceedings and ruled that the matter would be listed no later than 1 October 1999.

Now that date came and it went and then there was a programming hearing on 7 April where all parties were directed, contrary to our submissions, to proceed with a total review. Now that total review was to be in the hands of the bench by 5 May and 9 May, was for explanatory comments and comments regarding other submissions.

All parties, including the minister, were present on 9 May and full submissions were made. The only outstanding matter was the capacity or otherwise of the commission to make paid rates awards and consequently whether or not there should be a paid rates award principle.

Now that again has been complied with in accordance with the directions of the bench.

Now we have an application to do what the parties have already been directed to do by the bench and we say that our primary submission is that there's been more than enough time to address this matter, and again our primary submission is that the bench rule that way and decide the issue today or how much ever time you need to decide.

If that submission, which is our primary submission, doesn't find favour with the bench, then we will put the following to you. The submission of the minister has indicated to you that in his opinion there are profoundly important issues which remain unstated. Now those issues we're not aware of; those issues have not been brought to the attention of the bench or other parties - well, certainly not us.

Given the proceedings to date, we cannot fathom what those profoundly important issues may be and how in fact we may respond to those issues, nor why they have not been articulated in accordance with the previous direction of the full bench in the time frame already directed.

Should the bench be against us in relation to our primary position, we put that we would not be in a position to put further submissions to the bench until we have had the opportunity to receive and review the submissions relating to the profoundly important issues that the minister seeks to review.

We would need at least two weeks after the minister circulates the document going to those issues he has raised which can then be considered by TCCI's industrial committee and also we would undertake the task of coordinating other employer organisations and trying to get a common employer position to come to the bench with in relation to those matters.

After that, we would propose that the parties meet to discuss their respective positions with a view to reaching consent, or, in the alternative, as much consent as could be possible to at least narrow down the issues that the bench would have to determine.

If there was no consent following that meeting, we would submit that we would need a two week period to make written submissions on all the issues, bearing in mind that we understand that all bets would be off and it would be up to either party to make whatever submissions they wanted to in relation to the principles, and then after those further submissions had been exchanged between the parties, we would agree with what Ms Fitzgerald has said to you, that there should be a clear week between the receipt of those written submissions and when the bench would hear the matter again simply for explanatory comments about our own submissions and then any submissions made in response to the submissions of other parties. If it pleases.

PRESIDENT: How long does that mean in total then you're talking about, Mr Watson?

MR WATSON: Well, I would imagine that that largely depends on when we can get the document from the minister, Mr President.

PRESIDENT: And how long after that?

MR WATSON: Well, just for say, for example we got it today -

PRESIDENT: No, no, how long would you need after you've received submissions from the minister if that were the way we would go?

MR WATSON: Yes, okay. Well, we believe that we would need a full two week period to, as I say, talk to our industrial committee and also to coordinate employer organisations -

PRESIDENT: Yes.

MR WATSON: - and that will be a fairly big task in itself.

PRESIDENT: Yes, two weeks.

MR WATSON: Then we propose that parties meet to see what consent may be achieved or otherwise. Now I don't know, that may take a few days to do that, and then if there is consent, well obviously the issue is probably over, subject to the bench approving the consent position, but if it's not, we would then need a further two week period to go away and make our written submissions on the issue and then after that a further week before the hearing comes on if the matter is going to be arbitrated.

PRESIDENT: Yes, so that's a minimum of five weeks then after receiving the minister's submission?

MR WATSON: Yes, that's correct. Now our primary position is that that time frame can just be - that position - can just be ignored and you rule on things after today's proceedings simply from what was put to you on the last occasion and the narrow issue of the paid rates

award which is subject to the recent submissions, and we believe that the parties had more than an opportunity to raise issues before the bench before today.

5 PRESIDENT: Yes. What do you say to Ms Fitzgerald's submissions that - this is in respect to your first position - what do you say to Ms Fitzgerald's submissions that the extent to which the TTLC went beyond the paid rates principle was really of a consequential nature rather than anything new?

10 MR WATSON: Well, I suppose what I would say to that is that we would certainly not agree that they are consequential in nature. The very fact that one of the issues in the submission is to completely abolish the issue of special cases. Now the issue of special cases was an issue in the last proceedings that applied equally to, if you like, minimum rates or paid rates awards as per what we said on the last
15 occasion.

The simple abolishment of the paid rates award issue does not take away the issue of special cases. Now the whole issue of special cases has been reopened, in our view, and that is not simply consequent upon abolishing the issue of paid rates awards.

20 The other proposal is to completely rehash making the award above and below the safety net, as I said, to take away a previously agreed position and put further words in which are different and have a different meaning to what was put before. So we would say that the submissions made are just totally new issues that weren't addressed
25 on the last occasion and we don't believe that based on the original time frame put by the bench, and the parties were directed to meet those time frames, that those submissions should be allowed to be considered.

30 PRESIDENT: It puts the bench in an invidious position though. The material is in front of us.

MR WATSON: Well, we would say, Mr President, that -

PRESIDENT: And it could well be that the bench might have concluded along those lines of itself. So what's the point? How can we strike this material from the bench's minds?

35 MR WATSON: Well, we're asking you to rule that that material that's been put before you is not something that you would consider in these proceedings and you would simply consider what was put to you in the original written submissions, what was put to you on 9 May and the narrow issue of paid rates awards which were all agreed on in our
40 further written submissions made and submitted as part of this particular matter, and that's simply where it should sit.

PRESIDENT: Yes, all right. Thanks, Mr Watson.

Did I see you about to rise, Mr Tullgren?

MR TULLGREN: I just wanted to address you just briefly in relation to that exchange between yourself and Mr Watson. My submission about that would be this: that it is disputed obviously that it's new
5 material and my learned friend, Ms Fitzgerald, has addressed you on the basis of the way the principles have been constructed in the past where there has been an intermeshing of reference to minimum and paid rates in principles.

10 What Mr Watson puts to you is a quite simplistic position and we say unrealistic in the sense that while in his submission to this commission they had proposed initially to, if you like, corral all the paid rates provisions into one principle, that was not the position of the unions.

15 The realistic position then is that - and this is borne out also in the way Mr Watson would deal with it - that his proposals about abolition of the paid rates principle also seeks to remove a number of references to issues such as market which have an application potentially beyond the paid rates.

20 We say that the application or the submissions that we've made arise out of the fact that if you start removing significant chunks of some of the principles such as that in the special case that relate to paid rates, it then raises the operation of the principle in general. That's not new, it's consequential on operation. It's effectively like dropping a stone in a pond, that it sends out ripples.

25 Now in relation to the concern of the bench, the bench really would decide whether it accepted that they were consequential or if they were not.

30 Clearly, I think you, Mr President, have identified that the bench may well have independently come to a view about some of these matters which it is entitled to do arising out of the submissions where you take a particular view which might not reflect either side's view, but I don't simply think that it can be put to you in such a simplistic manner that you can rule out particular submissions.

35 A value judgment must be made about whether those submissions do in fact deal with consequential matters which we say, they do, or if you accept Mr Watson's position, none of them do, the only thing you can do is to simply remove all references to paid rates. Now, that in itself is illogical in the sense that if you simply do that and you work on the current set of principles, then the principles have to be redrafted, at
40 least, because of the way they've been put together. We say, that his suggestion to you is not the appropriate course because it's simplistic and does not reflect the realistic position.

It would certainly be my submission to you that you shouldn't adopt that course. You'd have to address the submissions in relation to their merit based on what the bench determines they reflect and make a finding as such. Clearly, my friend has nailed his flag to his mast by saying, they don't have any relevance. We say they do. That's the competing concern and that would be the appropriate way to deal with that particular matter.

The alternative about opening it up - I think its got to be said, it's common knowledge that two members of the bench as currently constituted propose to retire in the not too distant future and what have we got, surprise, surprise, an alternate proposition from Mr Watson which would run this proceeding out until retirement date or just beyond.

It is disingenuous to put a proposition knowing the movements of members of this bench, to suggest that the alternative is, if you won't knock the whole thing out now, the alternative is to run out a course of action which couldn't be complied with. We say that that's not acceptable in these proceedings, that Mr Willingham's proposals on behalf of the minister are more relevant.

The other observation to be made is, that if a party were to be given - if the bench was to accept in even a modified form Mr Willingham's submissions, then all parties have got a right to make further response about the principles. If a party chooses not to, then what Mr Willingham's proposition suggests, and which we would endorse, is that then there could be conferences between the parties and with the bench and then there would be a day of hearing where parties would verbally respond to the other and argue. That doesn't require one to go off and have consultations endlessly for weeks on end with industrial committees or other employers, it's a matter of responding and it's a matter whether parties put any further submissions, the degree of those submissions and then the responses because, effectively, on the last occasion it was for responses and out of those responses grew some issues.

That is what has happened here. The next time would be final. So, I think that his alternate proposition is not an alternate proposition at all, it is an attempt to sabotage these proceedings. He's attempting to use a shaft of light to do that and that shouldn't be allowed and that either of the propositions that he advances are untenable for the reasons that we've submitted and that either ruling on the matters and determining in principle whether they're new material or not is perhaps an expedient way of dealing with it.

The more appropriate method to end all these issues would be to adopt Mr Willingham's submission, in our respectful view, or a variation of it that fits within a reasonable time on the basis that at the end of the day the parties respond to each others submissions. Whether they make a submission or not is up to them. What in effect really becomes

the issue at the end of the day, in my view, is that the bench decides after listening to any verbal argument of responses of the parties what those positions are and then takes those into account, hopefully, in forming a new set of principles. If the commission please.

5 PRESIDENT: Thank you. Mr Willingham?

MR WILLINGHAM: Thank you, Mr President. I couldn't have expected my suggestion would receive such a highly charged response. Nevertheless, I repeat it. But just for the benefit of the TCCI and others, the profoundly important issues that I see arising from the exercise we've gone through since last the bench sat, I wouldn't have thought they were that cryptic but they're to be found in point 5.4 of the minister's submission.

For the purpose of the record, let me read:

15 *It is trite to observe, however, that wage fixing principles cannot vest the Commission with a power that is circumscribed, or is not bestowed upon it, by the Act.*

In my view, one could argue prima facie that some of the Wage Fixing Principles in their current form and indeed certainly those in the form proposed by the TCCI would be sorely tried to fall within what we would argue are given that the principle enabling mechanism of this commission is and must always be intact. Certainly, a set of Wage Fixing Principles, for reasons which we advanced in our submission, are important and we believe the commission may make such principles but it may not make principles that take it beyond the strict ambit of its legislation and those are the profoundly important issues which we see arising out of this issue.

Others may agree or disagree but having been brought into this discussion, this debate, for what it's worth, we put our quid's worth and that's it, or that's ten shillings worth of it in the old money. Now, the other ten shillings, well, the commission itself will determine whether we get that chance or we have to wait until another State Wage Case.

The TCCI and other parties will have to work out what time they need to respond but I can assure you of this, Mr President and members of the bench, the TCCI will not have to wait until the morning of hearing to receive our submission. If the commission pleases.

PRESIDENT: Thank you, Mr Willingham.

COMMISSIONER: Mr Willingham, was there 20 shillings in a pound, or ten?

40 MR WILLINGHAM: There were 20 shillings in the old quid, Mr Commissioner Watling.

PRESIDENT: Yes, Mr Watson?

MR WATSON: Just a couple of comments in response, Mr President, particularly in relation to Mr Tullgren's submission. I believe that his expectations and his criticism about further delays would certainly be
5 satisfied by you determining the matter after, as per our primary position.

Just a couple of things to go to for submissions made about the fact that the amendments are consequential. On the last occasion there was a specific exchange between yourself and Mr Tullgren - there was
10 some comment made, and it's in the transcript - I think Mr Tullgren said that he thought there may be some consideration given to jettisoning special cases. Your comment was, well, we'd like to hear argument on that, and his position then was, no, we're not proposing that in these proceedings. Then we get a submission to say, yes, we
15 should abolish special cases, a massive jump in position, and that was after the issue of paid rates awards had been considered by - in the exchange between the bench and the other parties.

The TTLC's submission made originally under the heading of, Making and Varying an Award Above or Below the Safety Net, says:

20 *(proposed amendment not yet determined: awaiting response from affiliates but suggest either retain the consequential amendment regarding 'agreement making/enterprise bargaining' or replace with Federal clause.)*

Then, we have a position on the day of hearing and now we've got
25 another position to respond to. Now, Mr Tullgren has taken the opportunity to say what he thinks about the situation. Well, my views are simply, that we believe that the TTLC have made an attempt to raise other issues that they had the opportunity to do in the previous proceedings and they've now taken the opportunity to do afterwards
30 under the shallowly described banner of saying that relates to paid rates awards, which we say, it doesn't.

We would say, Mr President, that enough is enough, that these proceedings should be concluded and that the bench rule and not
35 keep extending the time frames to simply allow parties to address matters that they should have in the first place.

PRESIDENT: Any further submissions? Ms Fitzgerald?

MS FITZGERALD: I wonder if we could seek permission from the bench to have some 10 minutes to consider matters that Mr Watson has raised and especially in terms of his arguments about our
40 statement that our submission relates to consequential matters relating to paid rates.

What we're seeking to do is obviously expediate the resolution of this matter and, as Mr Tullgren has indicated, we have some concerns about the time frame that's being proposed by the TCCI and their motivation for proposing the time frame.

5 I would like the opportunity to talk with my affiliates in terms of our submission.

COMMISSIONER: I'm just a bit concerned - Mr Watson came forward, you responded, and now Mr Watson has given his right-of-reply and you're seeking to open it up again. Aren't we on the same merry-go-round.
10

MR WATSON: Exactly.

PRESIDENT: The reaction of the bench to that proposition is that, I think we really have all that we need to consider to determine where we go from here, unless you can advise us now what it is you might want to do with an adjournment?
15

MS FITZGERALD: No.

PRESIDENT: No. All right. Were you about to rise?

MR WATSON: Only if you were going to adjourn, Mr President.

PRESIDENT: We're about to adjourn, so you nearly jumped the gun again, Mr Watson. We'll adjourn and consider our position and we'll return shortly.
20

SHORT ADJOURNMENT 11.14am

HEARING RESUMED 11.54am

PRESIDENT: We've considered the submissions of all the parties. Given the objections of the Tasmanian Chamber of Commerce and Industry to the additional written submissions prepared by the Tasmanian Trades and Labor Council, we consider that the only fair manner in which to resolve the question of how the Wage Fixing Principles should be reviewed is to adopt in an amended form the proposition put by Mr Willingham for the minister.
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To that end, we have decided the following: all submission put to date, whether they be written or oral, will be disregarded by the bench and the parties will be permitted to present complete and final written submissions. The parties are to provide to the commission and to each other their completed written submissions on all Wage Fixing Principles under review by no later than Tuesday 13 June 2000.
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The hearing will be reconvened on Wednesday 21 June 2000 at 9.30am. On that occasion, the parties will not be required to address their own written submissions, however, each party will be given an

opportunity to respond to the other parties' written submissions after which the commission will reserve its decision. We do not expect the hearing to go beyond 21 June 2000.

5 To assist all the parties in these proceedings, including the
commission, we request the parties to prepare their written
submissions in the following format: each principle must be addressed
under the heading and in the order they appear in the Review of Wage
Fixing Principles 1999. The review of each principle must conclude by
clearly setting out the principle in its current or proposed form. Any
10 new principles which the parties seek to introduce or any
rearrangement of the principles must be identified under a separate
heading at the end of their written submission.

Having advised and informed the parties of our position on this matter, the hearing is adjourned until 21 June 2000 at 9.30am.

15 **HEARING ADJOURNED 11.56am**