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AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 3089

TASMANIAN INDUSTRIAL COMMISSION

**PRESIDENT P.L. LEARY
DEPUTY PRESIDENT P.C. SHELLEY
COMMISSIONER J.P. McALPINE**

T No 12395 of 2005

ALL PRIVATE SECTOR AWARDS

Application pursuant to the provisions of section 23 of the Industrial Relations Act 1984 by the Trades and Labor Council to vary all private sector awards re: (i) increase all award rates and existing allowances relating to work or conditions, in private sector awards of the Tasmanian Industrial Commission, from a common operative date of, on and from the beginning of the first full pay period to commence on or after 1 August 2006 by an amount equivalent to 4 per cent; (ii) to increase the minimum wage that is payable to adults without regard to the work performed to \$503.80 per week; (iii) obtain a special increase of rates of travelling allowances in all relevant awards, and (iv) to the extent necessary to effect these changes, amend the Principles of the Commission

HOBART

9.30 AM, THURSDAY, 6 JULY 2006

Continued from 29.3.06

HEARING COMMENCED[9.37am]

PN437

PRESIDENT LEARY: Thank you. Are there any changes or additional appearances?

PN438

MR P.R. COLE: Yes, change of appearance, your Honour. On behalf of the Commonwealth Minister, I appear with MR M. RODDAM on behalf of the Commonwealth Minister for Employment and Workplace Relations.

PN439

MR D.A.C. McDOUGALL: I appear for the Australian Retailers Association, Tasmania.

PN440

MR M. WATSON: I appear with MR S. HALL.

PN441

PRESIDENT LEARY: Thank you. Mr McDougall, are you going to put any submissions?

PN442

MR McDOUGALL: I will be supporting TCCI.

PN443

PRESIDENT LEARY: Okay. Is that why you are sitting in the back row? All right. Before we start there are a couple of housekeeping things I need to do. We have got a number of written submissions which I will mark. I also received a fax from Mr FitzGerald at Mines and Metals who indicated on the last occasion that his organisation would not have any employers with employees covered by State awards. He has now reconsidered that submission and indicates that there could be some impact on his members. Accordingly he will be supporting the submissions of the TCCI. I will mark that fax as AMMA1.

EXHIBIT #AMMA1 FAX FROM MR FITZGERALD AT MINES AND METALS

PN444

PRESIDENT LEARY: We received a written submission from the Commonwealth Minister for Workplace Relations which I will mark Commonwealth 1.

EXHIBIT #COMMONWEALTH1 WRITTEN SUBMISSION FROM THE COMMONWEALTH MINISTER FOR WORKPLACE RELATIONS

PN445

PRESIDENT LEARY: And we received finally, some submissions from the Tasmanian Government which I will mark Tasmania 1 and I take it everybody has seen a copy of that submission?

EXHIBIT #TASMANIA1 SUBMISSIONS FROM THE TASMANIAN GOVERNMENT

PN446

PRESIDENT LEARY: And the submissions from the Tasmanian Chamber of Commerce and Industry I shall mark TCCI 1.

EXHIBIT #TCCI1 SUBMISSIONS FROM THE TASMANIAN CHAMBER OF COMMERCE AND INDUSTRY

PN447

PRESIDENT LEARY: We also inform the parties that we advertised in the three daily newspapers on 26 and 26 May inviting any submissions and we got a zero response to that so we have no other submissions that we need to deal with. All right. I understand there has been some discussion between you as to procedures?

PN448

MR TULLGREN: Yes, your Honour. We had a brief discussion. It would seem based on the indications that all my friends have provided we may well be able to conclude all the submissions in this matter by about 1 pm. If that is the case then it would be our joint view that if the Commission was minded it would look like we were going to need that time to proceed to dispose of it all by the perennial adjournment and then the Commission will then retire to consider at its leisure.

PN449

PRESIDENT LEARY: We are happy with that proposal.

PN450

MR TULLGREN: Your Honour, may I just raise one matter and it may well - and I apologise in advance if I have misunderstood - but on the last occasion the bench granted the Commonwealth right to intervene to argue for the adjournment of these proceedings and that is contained in paragraphs 25 and 26 of the April hearing before you. My understanding is that the Commonwealth would have to seek the right to intervene in these proceedings to make any submission proper that it wants to make and I just seek from the Commission an indication of whether we understand that position or is it that the Commonwealth was granted some wider right to intervene.

PN451

The bench will recall that we submitted on the last occasion that the Commonwealth should get the right to intervene but they never did. It should

be limited to making submissions about the adjournment proceedings and those matters have been disposed of. We now - - -

PN452

PRESIDENT LEARY: It was given the right to respond to your application and to indicate its response and also if there were going to be any witnesses, and I take it that there - I think Mr Cocker indicated in correspondence that there were - it was likely there may be one witness but obviously that hasn't transpired and the Commonwealth under the normal rules would have been given the right to examine, but that is not going to happen. Just one other question. As is usual in these sorts of things, has the TTLC and the TCCI had discussions about reaching an agreement?

PN453

MR TULLGREN: Yes, and they have not been fruitful.

PN454

MR WATSON: I can confirm that, President. There were some discussions probably three to four weeks ago in an attempt to but unfortunately we were unable to but we did try.

PN455

PRESIDENT LEARY: Good. I am pleased to hear that. All right. Now, do any of the parties want to expand on their written submissions in a limited way or do we accept them as provided?

PN456

MR TULLGREN: Your Honour, from our point of view we rely on those submissions. We want to speak briefly to them but also want to respond to the various other parties' submissions and as your Honour will be aware on 5 July Unions Tasmania notified all the other parties before the Commission that it would be seeking to tender certain documents. They are made in fact as part of our response to the submissions - - -

PN457

PRESIDENT LEARY: Yes.

PN458

MR TULLGREN: - - - that have been made to the parties. We would seek to make some brief summary of what we - we will also be dealing in some degree of detail with the other parties' submissions.

PN459

PRESIDENT LEARY: So do you want to put some additional submissions to your initial submissions? Perhaps if you do that first then the other parties can respond and then you will have the right to reply, of course.

PN460

MR TULLGREN: If your Honour please. I might commence by addressing the issue of the exhibits which I have referred to and if the Commission please, we would seek to tender all of the documents that are referred to in the letter at this juncture that are all before the Commission, simply to allow the process to

go on, so if I can identify those that we seek to tender. They are the decision of West Australian Industrial Commission dated 26 June.

PN461

PRESIDENT LEARY: For the purposes of this exercise I will mark it TTL2.

EXHIBIT #TTL2 A DECISION OF THE WEST AUSTRALIAN INDUSTRIAL COMMISSION DATED 26/06/2006

PN462

MR TULLGREN: A decision of the New South Wales Industrial Relations Commission dated 26 June.

PN463

PRESIDENT LEARY: TTL3.

EXHIBIT #TTL3 A DECISION OF THE NEW SOUTH WALES INDUSTRIAL RELATIONS COMMISSION DATED 26/06/2006

PN464

MR TULLGREN: A copy of the Sensis Business Index Small and Medium Enterprises dated May 2006.

PN465

PRESIDENT LEARY: TTL4.

EXHIBIT #TTL4 A COPY OF THE SENSIS BUSINESS INDEX SMALL AND MEDIUM ENTERPRISES DATED MAY 2006

PN466

MR TULLGREN: And copies of parts of the OECD document boosting jobs and income policy reasons for reassessing of the OECD strategy of 2006.

PN467

PRESIDENT LEARY: TTL5.

EXHIBIT #TTL5 COPIES OF PARTS OF THE OECD DOCUMENT STRATEGY OF 2006

PN468

PRESIDENT LEARY: You are aware that the South Australian Commission handed down a decision last night?

PN469

MR TULLGREN: Yes.

PN470

PRESIDENT LEARY: Or late yesterday, not last night.

PN471

MR TULLGREN: It did and I spent an interesting morning digesting what the learned South Australian Commission has said. There will be a couple of comments depending upon anything that arises in the proceedings that we would seek to make in relation to our preliminary understanding of that decision. Members of the Commission, the Tasmanian Trades and Labor Council has lodged an application to increase award rates of pay by 4 per cent; to increase the minimum wage by 4 per cent; increase work-related allowances by the same per cent and all of those increases to apply from 1 August 2006 which is 12 months from the last increase.

PN472

I note that on 28 May the unions amended the application to make it clear that they were seeking an increase in meal allowance not the travel allowance. The application was made under section 35 of the Act. At this point it is important also consider that despite what is asserted this is not the biggest wage increase that has been sought or awarded by this Commission and to illustrate that point we would seek to tender a table which sets out the wage increases that have been awarded from 1998, both as a dollar increase and as a percentage increase of the C14 rate in the Metal Industry Award, the State Award.

PN473

PRESIDENT LEARY: Thank you. I will mark that TTLC6.

EXHIBIT #TTLC6 TABLE SETTING OUT WAGE INCREASES AWARDED FROM 1998

PN474

MR TULLGREN: The Commission will see that the highest increase awarded as a percentage was 4.31 in 2002 and in 2004 it was 4.24 and the average increase between 1999 and 2005 has been 3.8 per cent. The application we say is no different in substance to those that have been previously made and it is certainly not radical or extraordinary groundbreaking or a leap in the ground dark, all of which are adjectives, descriptions that have appeared in various other parties' submissions.

PN475

The application is straightforward. It seeks a wage increase for low paid workers who are award reliant and it also seeks to try to overcome the compression of relativities which has occurred over a number of years. Our application is in stark contrast to the principal position advanced by the TCCI and others as well as the Commonwealth Minister, and that is effectively for a wage freeze. We ask rhetorically, which is more startling in the history of

wage fixing in Tasmania? The application by the unions is in accordance with the Act and it seeks that the Commission exercise its jurisdictional requirements under the Act which is, we say, a hardly revolutionary proposition to be advancing.

PN476

The application we seek repeals the requirements of divisions 1 and 2(a) of Part III of the Act. There is an obligation on the Commission to maintain fair wages and relevant award levels within Tasmanian awards, not just at the entry minimum wage level because if that were the case then those receiving higher rates of pay within those awards will in fact suffer a real decline in wages. I think it is fair to say that we would ground our claim effectively by and in the words of St Paul in his letters of the Corinthians where he said:

PN477

I do not mean that there should be relief arising pressure on you but it is a question of a fair balance between your present abundance and their need so that their abundance may be for your need in order that there may be a fair balance, as it is written the one who hath much did not have too much and the one who had little did not have too little.

PN478

We say that those words should guide the Commission's decision in relation to this because they certainly guide our basis upon which we make our submission. This is about taking the abundance that exists in the economy and distributing part of that abundance to those that have less and that in itself is not revolutionary although it may be argued that in advancing that proposition today the response of the employers and the Commonwealth minister has been effectively the same as those of the Roman administration at the time when Paul was around, and of the Pharisees, and that is that these are revolutionary and frightening propositions. History has shown them to be wrong and we see history will show that we are right.

PN479

In bringing the application we are concerned with fairness and ensuring there is a fair safety net as is required under section 47AA(1). We also say that for award wages to be relevant and provide a fair safety net they must be of some sensible relativity to community standards and wage movements. We say that the national and Tasmanian economies are in good shape. Employment is growing, profits are high, inflation is low. We argue that while price movements as measured by the CPI are moderate the impact of price movements on lower income families is disproportionately high and seriously impacts on the ability of those householders to operate.

PN480

We say that the cost of granting the claim is negligible. It would add about 0.7 of 1 per cent to the Tasmanian aggregate wage bill. We note that only the Commonwealth argue totally for no increase in wages. We note that the Tasmanian Minister argues for \$20 and that the employers for \$13.50. We say that in relation to the Commonwealth's involvement in this case, that based on their written submissions what the Commonwealth is seeking to do is to re-argue the adjournment application which they lost on the last occasion and that

the Minister puts nothing to this Commission about the economy, either the national economy or the Tasmanian economy, and that the submission can be of no assistance to this Commission in determining the matters before it.

PN481

Unlike previous State wage cases the Tasmanian Industrial Commission like all Tasmanians, is faced with a radically different industrial relations landscape. The Commonwealth is engaged in a radical, what we say is ideologically driven restructure of industrial relations which includes stripping from the Australian Industrial Relations Commission its jurisdiction and power to consider applications to vary award rates of pay thus preventing it from awarding wage increases to lower paid award-reliant employees; stripping wage classification structures out of awards; establishing the already named fair pay commission for set wages and by using the fair pay commission effectively institute a wage freeze. We note that if the AIRC still had power there would have been a decision to increase wages by now.

PN482

PRESIDENT LEARY: Or there would have been a decision perhaps.

PN483

MR TULLGREN: I am sorry?

PN484

PRESIDENT LEARY: There would have been a decision perhaps.

PN485

MR TULLGREN: That is more clearly put although we take the optimistic view that based on the economic material that is around that there would have been an increase. Despite the radical changes the States have responsibility to set wages for award-based employees who are not picked up by the changes and this application addresses those. Based on a figure set out at paragraphs 161 to 172 of our submission, we say that there are around 40,000 employees who are still reliant on State awards.

PN486

We note that that figure is broadly agreed to by the other parties. There is some quibbling at the moment but the figure of about 10 per cent of 40,000 is generally within what the parties accept would be the figure. The methodology that we used to arrive at the figure is set out at paragraphs 161 to 172. The application not only affects these employees but also provides a safety net to underpinning bargaining. As we have said, we rely on the written submissions and seek to supplement those and as I say, we will make reference to some of our submissions, however we won't take the Commission to all of the details because we say this Commission is comprehensive and sets out how we calculated and how we come to the position we put the employers in the principal position argues that the case should not proceed until the decision of the fair pay provision is known.

PN487

This matter was extensively addressed by unions in the adjournment application made by the Commonwealth Minister on 29 March and which was

rejected by the Commission. We are not going to go over these save to say that all of the State Industrial Tribunals that have - who are exercising these State wage-fixing powers, have rejected the same argument and they have all rejected the same argument both in relation to an adjournment of proceedings and in the principal proceedings.

PN488

All such Commissions recognise they have an independent statutory responsibility to set wages. The fact is, we say, that as a result of the amendments made in the Workplace Relations Act the Commonwealth has created a situation where there is significant diversions between the Federal and the State systems. It was the Commonwealth, we say, that leapt into the dark, not the States, and we note that the Western Australian Industrial Commission addressed this issue at paragraphs 70 to 73 of their decision and at paragraph 70 the Full Bench said:

PN489

We reject the rather presumptuous written submission of the Commonwealth that for us to do as we are obliged to do under the Act would be a leap in the dark.

PN490

We note that the submission was effectively disowned in the Commonwealth's oral submissions. We emphasise that it is not the role of the Commission in these proceedings as the Commonwealth seems to suggest, to some how anticipate some further determination to AFPC and the decision goes on. We say that the same applies and that the argument and the position put by the West Australian Commission has not been adopted by this Commission.

PN491

What might have applied in the past was effectively severed by the actions of the Federal Government. We note that the Federal Government argues that there should be consistency in the wage fixing but we also note that the Minister is so committed to his cause that he withdrew from the New South Wales proceedings and after hallowing out issued a press release which effectively attacked the State Commission and was put in the unfortunate situation of having to despatch the Commonwealth Solicitor-General, Mr Bennett QC, to stand before the Full Bench of the New South Wales Commission and to argue why the Minister shouldn't be cited for contempt.

PN492

The Full Bench accepted the learned argument of the Solicitor-General and decided not to proceed but it does raise the question of the credibility of a party that argues that there should be consistency, but in relation to the biggest single State economy, that is New South Wales, actually withdraws from the proceedings and we say that it is difficult that the Commonwealth can be serious about national consistency when they so fully embrace and encourage the use of Australian Workplace agreements and employers making grants with themselves all of which are not there to promote national consistency.

PN493

As to consistency we note that both the New South Wales and Western Australian Commissions have agreed to an increase of \$20 while the South Australian Commission somewhat more exotically has decided on a 14 and an \$18 increase dependent upon whether you are at the trade level equivalent or not. We say that when you consider those three decisions that in fact the decisions in New South Wales and Western Australia are far more cogently argued than that in South Australia accepting of course that the South Australian economy has, because of some of the features in it, not performed necessarily as well as others, and it is also to be borne in mind that based on all of the economic material that is before you from all of the parties, the Tasmanian economy is going particularly well and there would be, we would respectfully submit, no basis at all for accepting that you should award an increase that the unions have sought.

PN494

Further, if the Commonwealth was really committed to the question of consistency in the adjournment then we say that it should be supporting a 4.4 per cent increase which is what the Remuneration Tribunal granted on 20 June as a pay increase to members of the Australian Fair Pay Commission, a determination which was not opposed by the Commonwealth Minister. As a result the Chairman, Professor Harper, now earns \$81,445 and the part-time Commissioners, \$40,729. In perspective Professor Harper's salary is 3.23 times the minimum wage and the part-time commissioners it is 1.55 times the Tasmanian minimum wage, and we believe that clearly, to avoid any whiff of hypocrisy in relation to these proceedings, that the Commonwealth clearly should give notice that it supports a 4.4 per cent pay increase because heaven forfend any members of the Commission - - -

PN495

PRESIDENT LEARY: Are you increasing your claim?

PN496

MR TULLGREN: Sorry?

PN497

PRESIDENT LEARY: Are you amending you claim to 4.4?

PN498

MR TULLGREN: No, we are being consistent about ours, we just want to say that heaven forfend that those that are setting the wages for the low paid, including the chairman who admitted that he didn't know anyone who was low paid, surely that if they are worth 4.4 per cent then the low paid are worth the same. We wait with interest to see what my learned friend says on behalf of the Commonwealth Minister.

PN499

We say that further there is no evidence to support claims that any decision would make life difficult for employers. It could easily be asserted that employers benefited from not having to pay bargaining outcomes to their workers and because of the time delay between national and State wage increases. We say the best that the AFPC will not report until September or

November 2006 beyond the time set under the Tasmanian Act or this Commission to determine applications including increasing the minimum wage which is required to be done annually and we have addressed at least in what we say what annual interest in adjournment.

PN500

There is a positive requirement on this Commission to determine the minimum wage and then to determine all the other rates of pay. The Parliament has determined that that time will be annually. The issues concerning consultation, etcetera, by the Fair Pay Commission which are addressed by the Commonwealth, are immensely interesting and have absolutely no relevance at all. The peregrinations of the Commission around the country can add nothing to the considerations of this Commission in dealing with this application.

PN501

The Fair Pay Commission will decide in secret, there is no ability to ventilate competing issues in the open like we are doing today. The AFPC is a hand-picked group chosen to determine wage laws in a restricted and limited way. We remind the Commission that if Prime Minister Howard had got his way the minimum weekly wage would be \$50 a week less or \$2600 a year less than it is today and that is based on the submissions that his government has made to every national wage increase since he came to power and it beggars belief that he would set up a Fair Pay Commission not to in fact drive down wages and that is because what he failed to do through the Commission he does by setting up effectively what could be referred to as Mr Howard's coup law.

PN502

The Commonwealth addresses the issue of fairness at paragraphs 230 to 237. The self same submission was made to the New South Wales Commission and was dealt with in paragraphs 11 to 15 of that decision. I will take the Commission to those, and at paragraph 11 the Full Bench says:

PN503

A full consideration in this respect is the fact that the AFPC conducts proceedings that are not required to be productive ...(reads)... with those required in this Commission under the statute that governs and empowers the proceedings.

PN504

They go on to say in paragraph 12:

PN505

Take, for example, the second consideration of fairness in wage fixing ...(reads)... no such criteria is expressly found in section 23 of the Workplace Relations Act or elsewhere in the Act.

PN506

And they go on. So you can see that these matters have been addressed and the New South Wales Commission clearly differentiated the differences between the operation of the Fair Pay Commission and itself. Now, one of the issues that we also draw your attention to is that in the south - when the

proceedings in South Australia took place the Commonwealth Minister argued for an adjournment on the basis of waiting for the Fair Pay Commission. During those proceedings her Honour Deputy President Barker asked the Commonwealth counsel if in fact the Full Bench was to consent to an adjournment or a delay in the proceedings, what would be the Commonwealth's position about any retrospectivity that might apply to which silence came the stern reply.

PN507

The Commonwealth was asking on the one hand but wasn't prepared to address it and it is an issue that is relevant in these proceedings that if parties seek an adjournment of these to await the decision of the Fair Pay Commission then what is the issue going to be about retrospectivity and we note that nobody has addressed those. We would like the Commission to consider our submissions in the adjournment application which sets out the details of the divergence, at least in relation to the setting of award rates of pay where these matters were fully ventilated.

PN508

Now, turning to the economic environment we address these at paragraphs 17 to 60 of our submissions and a summary of those can be seen that in effect that gross domestic product grew by half a per cent in the December quarter 2005. Removing the farm sector from the gross non-farm product calculation, that measure grew by 3 per cent in the year to December 2005. At table 2 on page 7 the total shows that economic expansion is now in its fifteenth year until next year.

PN509

At page 7 we indicate that the economy is not slowing and that any steadying of growth is currently on record high levels of growth. That deals with any argument that there has been a plateau. The plateauing is not a decline and it is not a slowing. In May the Federal budget papers contained an updated economic forecast which included a GDP growth of 3 and a quarter per cent in the next year. At paragraph 59 of its decision the New South Wales Commission helpfully summarises the contents of that document and show that apart from the 3 and three-quarter per cent growth there is moderate inflation, low unemployment and an expansion in productive capacity which the Treasury document says:

PN510

... will build a sound basis for sustained economic growth.

PN511

Business investment is up by 17.3 per cent between the December quarter 2004 and that of the same period for 2005 and there is a welcome queue in the housing market. The benefit of this is the decreasing levels of business investment as opposed to increased household expenditure now pure economic growth. Again at paragraphs 83 to 87 of their decision the New South Wales Commission addresses in great detail a number of these economic issue and they have reproduced a number of the charts from the mid year economic statement which showed and reinforced the strength of the economy.

PN512

We draw the Commission's attention to those because they in graphic form support the argument that we put and at paragraph 88 the Full Bench said:

PN513

Investment levels are currently strong and as a factor in the overall mix of economic considerations favour the granting of a reasonable wage increase.

PN514

And we say that we urge the Commission to adopt that reasoning. During the period of rapid expansion profits have grown by 26.8 per cent while the relative share of wages has declined by 4.3 per cent and that is for the period 1991 to 2000. The headline inflation rate is predicted to run between 2.5 and 3 per cent, while the actual level excluded volatile items such as fuel rates by only 2.4 per cent of the year to September 2005 and inflation, as we say, is moderate. Employment is continuing to grow, it is up 1.2 per cent over the year to April 2006 with 65 per cent of all new jobs being full time.

PN515

Also the May economic document that we referred to released by the Federal Treasury contained an update for economic forecast which included in addition that household consumption would strengthen by 3 per cent, business investment would be 8 per cent and exports will rise by 7 per cent and again, in paragraphs 137 to 150 the New South Wales Commission summarises the conclusions on the national economy and they do so at paragraphs 137 to 139, they summarise the positive features of the economy and we have addressed those.

PN516

At paragraph 138 they address the question of risks to the economy and we say that that argument that they have addressed there is equally relevant here that a fair and minimum wage does not pose a threat to inflation but on the other hand will help assist the low paid and we say that that argument can be adopted and should be adopted by this Commission.

PN517

Now, turning to the Tasmanian economy which we deal with between paragraphs 62 and 76, we say that the gross State product is a useful indicator of how the State economy is growing because it applies based on relative population of Tasmania and shows that the Tasmanian economy is doing well in comparison with the larger and more popular States. It was growing at 4 per cent in 2004/5 which is one and a half per cent above the national average.

PN518

Our application seeks to ensure that some of the prosperity derived from the per capita GSP is allocated to people on lower wages. Our submission also shows that private investment expenditure grew 8 and a half per cent in the 12 months to September 2005. The business investment increased by 4.32 for the December quarter 2005 and by 21 per cent for the 12 months to December 2005. Purchase of equipment and machinery in the 12 months to December 2005 increased by 42.2 per cent.

PN519

In April 2006 there were 224,000 people employed in Tasmania, an increase of 5400 over the previous 12 months. Employment has increased since 2001 ahead of the national average of 2.4 per cent; population continues to rise and while employment rose slightly by .4 of 1 per cent, so did the participation rate by 1.3 per cent which all the economic material shows in Tasmania is traditionally lower than in other States.

PN520

Economic growth will increase by 4 per cent and exports from Tasmania grew by 10 and a half per cent. Tasmania has the lowest labour costs in Australia, average weekly earnings for full-time adults is 11 and a half per cent below the national average and employee compensation per hour work is 15 per cent below the national average. In summary we say the national and Tasmanian economies are performing well, unemployment is at record lows, profits are high and inflation is low. When the Commission considers the claim including all the written material in the light of section 36 of the Act, we say the Commission can find no startling or significant concerning feature in the economic situation that would give rise to a concern.

PN521

The granting of the claim will not have any adverse effect on the Tasmanian economy with or without reference to the level of employment. There is no evidence before you to show that any section of the economy is likely to be affected by the increase and the economies are strong, buoyant and performing well. In relation to the issue of the wage environment we have addressed those at paragraph 77 to 103 of the submissions. We say that the relevant measure of wage movements is the wage price index and this is a matter of controversy between ourselves and the TCCI in relation to how this should be approached.

PN522

The logic of our position is set out at paragraph 88 where we say that the wage price index measures changes in wage movements and doesn't record like non-wage costs. It measures the cost of purchasing the same quantity and the quality of labour input. It is a measurer of changes in wage movements rather than levels. It is not affected by compositional change, that is whether - how many people are casual or part time, therefore it is less volatile than other measures of wage movements.

PN523

It is known that in the 2005 Australian Commission it was accepted that the wage price index is the preferred measure to be used by the Australian Industrial Relations Commission and the Reserve Bank and it shows that since 1997 wages have increased by an average of 3 and a half per cent. At paragraph 87 we show that the wage price index for Tasmania grew by only 1.1 per cent to the March quarter 2006 or 4.1 per cent over the year.

PN524

At paragraph 103 we say that using the WPI and maintaining wage rates and relativities the 4 per cent increase which we seek is needed. Granting the claim that in part of setting a fair safety net increasing award rates is about

retaining the relativity to other wages and fair earning standards. The WPI does this. The CPI, which is what the TCCI want in their claim, does not do this. Granting wage increases will ensure that, paraphrasing again the Prophet Isaiah, the low paid do not spend their strength for nothing and that they receive part of the award, at least on Earth, and the remainder in Heaven.

PN525

In relation to the household expenditure survey which we have also referred, we rely on the ABS publication to illustrate expenditure patterns for low income persons. We say to use the CPI by itself is not of real assistance because while it deals with the price increases it does not deal with the expenditure patterns of low income householders which are different from expenditure patterns as identified in a basket of goods and the change in those prices.

PN526

The household expenditure survey is divided into five quintiles, the lowest quintile is households that are those reliant on wages and salaries. These are disproportionate down in the bottom two quintiles but primarily in the lowest. At table 5 on page 39 we show that 89.9 per cent of persons in quintile one sees the income from wages and salaries and there is a mean income of \$643. At pages 40 and 41 we deal with the survey commissioned by unions which bears out the material in table 5. The expenditure survey showed that 60 per cent of the expenditure is on necessities, food, housing, fuel, power, clothing and transport.

PN527

While the CPI might have risen by 4 per cent in the last year low income households faced a 4 and a half per cent as opposed to a 4 per cent increase in food; a 6 per cent as opposed to a 4 per cent increase for housing and a 6.2 as opposed to 4 per cent increase in transport. The highest expenditure for low income households is in areas that increase in cost most. If you provide wage increases based on the CPI then lower income earners will be worse off but if it was comparing the CPI to the actual expenditure of these persons, it shows that they will be worse off.

PN528

We urge you to reject the award of any increase based on the CPI and we say that you should use the wage price index as the basis for the increase basically to ensure that people keep in touch with the same position as they are now in relative to other earners. Now, to illustrate this particular point we seek to tender a document which is a calculation based on using the rates in the Metal Industry Award and applying the formula proposed by the TCCI.

PN529

PRESIDENT LEARY: Thank you, we will mark the document TTLC7.

EXHIBIT #TTLC7 CALCULATION BASED ON RATES IN METAL INDUSTRY AWARD

PN530

MR TULLGREN: What this does is to take the classification rates or to show the current weekly rate, show the employers proposed increase, what the new rate would be with the increase if the TCCI position were granted, the CPI for Hobart, the increase with inflation and then what the real rates of pay would be and as you can see in the last column that if the TCCI proposition were granted there would in fact be negative growth in wages in real terms for every classification so that in fact what the TCCI are putting to you is not in fact a wage increase, it is a proposition for a new wage decrease.

PN531

Now, in relation to the question of the impact of granting the increase based on recovery which we have addressed that at paragraphs 161 to 171, and which identify that there is about 40,000 not including farm employees involved. We say that none of the statistics available are able to calculate what the number of farm employees will be described and you will see at the costing at paragraphs 173 to 182. We reject and invite the Commission to do the same, the claims in our costing is of no assistance to the Commission. Our costing deliberately deals with the aggregate cost impact of the 4 per cent claim. It is the only wide impact of the claim that the Commission should consider when determining these matters.

PN532

The Commonwealth offers no alternative proposal for the costing of the claim and at paragraph 5(7) of the Commonwealth submission a claim that an appropriate costing will take into consideration the impact on relative competitiveness of unemployed rate of businesses and employment opportunities that they claim could be affected if the claim was granted. Without explicitly stating so it appears that the Commonwealth is arguing that any increase awarded by this Commission will be higher than that granted by the Fair Pay Commission. There is no evidence provided to support that.

PN533

It also appears that the Commonwealth is working under the assumption that an increase in award rates of pay to Tasmanian's lowest paid workers will result in a negative impact on employment. The Commonwealth subscribes to the theory that there is a negative elasticity on the demand for labour applying for pay increases. We do not subscribe to this theory. For a considerable number of years this debate has preoccupied the parties before the Federal Commission's case. The Commonwealth has continuously expressed its displeasure with the AIRC over its failure to accept the Commonwealth's argument that such a negative relationship exists at least to the extent put by the Commonwealth.

PN534

The facts speak for themselves and employment and participation levels have continued to rise in Tasmania and in parallel with moderate to real growth in minimum wages. We say that there is nothing to lead to an opinion being formed that there is any negative relationship between wages and employment.

PN535

PRESIDENT LEARY: Wasn't there a recent OECD - - -

PN536

MR TULLGREN: I am sorry, your Honour?

PN537

PRESIDENT LEARY: Wasn't there a recent OECD report that looked at the relationship between an increase in minimum wage and employment and I think came to the same view?

PN538

MR TULLGREN: There is, your Honour, and I am coming to that. That is the document that we tendered this morning and relevantly we say that if you go to page 13 of that report, in the second full paragraph the OECD, which I might interpose to say here, is not actually considered one of the most Bolshevik organisations when it comes to economic analysis. There aren't too many reds running around in that organisation, and they say:

PN539

Recent developments suggest that a moderate work for minimum wage generally does not undermine employment but also that adequate allowance ...(reads)... together with high payroll taxes may affect the employment prospects involved in vulnerable groups.

PN540

Now, clearly they are saying - and this is a reconsideration of their own jobs policy - that moderate increases in minimum wages don't have an effect on employment and in fact protect vulnerable categories such as young people, but we would also say that the vulnerable categories include the low paid. We also say that - the TCCI at page 35 of their submissions claim that the cost invested in methodology used by the unions is similar to that used by the ACTU in the past. This is true.

PN541

It criticises the methodology as it does not include flow-on costs. This is also true. There is no data or estimates in the cost of flow on to non-award dependent employees. We submit that there is little evidence of any flow on with a growing discrepancy between award rates of pay enjoyed by workers covered by agreements. We presume that the point that is being made here is that there is a greater cost impact than the unions calculated as a result of automatic agreement adjustments when the award was adjusted.

PN542

Whilst we agree there is no recent data on the extent of over-award payments to the flow-on award adjustments to agreements in Tasmania, we say the following points can be made. As a result of recent legislative changes the majority of any agreements that allow for adjustments to the rates of pay in the event of an award rate rise will now be within the Federal system; data shows that workers employed under agreements earn considerable more than those workers relying on awards; the average weekly ordinary time in which the award dependent employees as of May 2005 was \$643.30 a week, a comparable ate for those under agreements being \$993.20 or a difference of \$349.90.

PN543

The unions costing calculates the State-wide economic estimate of 4 per cent in award rates of pay. The costing does not take into account the extent of over-award payments as it is agreed there is no reliable data for this. There is an implied assumption that all award - only workers in unincorporated businesses will receive the award increases thus making the costing an over estimate.

PN544

Unlike previous ACTU submissions to the national safety net review case heard by the Federal Commission, there is no discounting the take account of non-compliance or non-observance of awards. There is no reliable State data available to facilitate this discounting, it is therefore presuming that the awarding of a 4 per cent increase will immediately flow on to all Tasmanian award-dependent employees employed within the private sector and unincorporated businesses.

PN545

It is further assumed that there will be 100 per cent observance for these terms. The net impact on aggregate wages of .7 of 1 per cent and a maximum addition to the total of ordinary time earnings in Tasmania of .2 of 1 per cent then the impact on the CPI would be .4 of a per cent. We say that the economic impact is negligible. The application is for 4 per cent increase as opposed to a flat dollar increase. We note that the Tasmanian Government and the TCCI as its fall back, seek flat dollar increases admittedly they are differing amounts.

PN546

We say the general agreement most wage increases are running at about 4 per cent and this is set out at page 11, paragraphs 93 to 98 of our submission. Added to this the wage price index calculation say that a 4 per cent increase will allow the low paid to just remain where they are, whereas a flat dollar increase drives them back. Flat dollar increases disadvantage all award reliant employees no matter where in any award pay structure they are because the increases do not keep pace with other factors which is shown by the WPI. They compress relativities. We say that it is necessary to ensure that all award rates remain relevant not just those below trade level. Flat dollar increases, especially in trade levels and above cause a decline in minimum wages. The awarding of a 4 per cent increase will arrest this decline. It maintains the current situation concerning the compression but does not add to it.

PN547

PRESIDENT LEARY: Do you think perhaps that the relativities are now so compressed that it is - that they are irrelevant anyway? This has been a debate I recall in the Federal Commission on a couple of benches I sat on, and I thought that maybe everybody had given up on it.

PN548

MR TULLGREN: No, not the unions. There is certainly - we say that relativities are still important - - -

PN549

PRESIDENT LEARY: I agree they are important but their relevance seems to have been diminished because of the last what, 10 safety net reviews or national wage cases?

PN550

MR TULLGREN: I am not sure, your Honour, we would categorise it as their relevance as being reduced. They have suffered somewhat of a battering in the sense that - - -

PN551

PRESIDENT LEARY: Considerable battering, I would suggest.

PN552

MR TULLGREN: - - - the increases have compressed the relativities but they haven't destroyed them and we say that in our point where the continued compression can be arrested and this increase will do not more in this wage case, than arrest that compression. The issue of what was to happen about overcoming that compression that has occurred over time is a matter to be addressed at other times.

PN553

PRESIDENT LEARY: I guess it begs the question then does that lead to a claim to go back and readjust them for the compression that has occurred?

PN554

MR TULLGREN: I am not in the position to speculate on that simply because it is not a matter that - it is from those that instruct me, a matter of which we have given any consideration to. It is purely about halting or arresting the continued compression by the claim that we have made, and the halting of that would provide that the trade and above rates will stay where they are relative to other wage earners in the community, and it is for those reasons we invite the Commission for consent to ensure the continued relevance of the award, both in the rates of pay and to prevent a real wage decline.

PN555

Addressing the impact of the wage increase on employment we say there is nothing to show that the modest wage increases awarded by this Commission in the past has had an adverse effect on employment. In fact the AIRC in June 2005 safety net review decision at paragraphs 159 to 280 engaged in a comprehensive discussion about whether or not minimum wage adjustments would adversely effect employment and the general finding was there was no basis to infer moderate wage increases would be adversely affected by employment levels and that is borne out by the OECD exhibit we refer to.

PN556

The strong economic situation in Tasmania, taken together with the claim, does not point to any adverse impact on the employment by agreeing with the claim. We note that the Commonwealth at paragraphs 5.4 and 5.7 dismisses the union's costing but it puts nothing to challenge it or convince the Commission that the costing is wrong.

PN557

Now, turning to the position of the Commonwealth Minister, the Commonwealth Minister has made a submission of 105 paragraphs, two appendices and an attachment. Of 105 paragraphs 86 may be characterised as either promoting the Fair Pay Commission, simply again saying the union's viewpoint or reproducing the argument that the Fair pay Commission should be accorded privacy over all others and that this Commission should defer the decision.

PN558

The first appendix gives the names and the brief biography of the members of the Fair Pay Commission and the second, a penny portrait of the OECD wage setting tools borrowed from the low pay commission. We have to say that it is eminently relevant, we say, for this Commission to consider that in staying his Majesty King Juan Carlos determines the minimum wage. That is immensely relevant, we say, to these proceedings or that a congregation of the chief ministers of the provinces of Canada get together in Quebec and have the same impact.

PN559

None of those propositions are of any relevance. Perhaps unless King Juan Carlos came to Australia and became the king. The bulk of the remainder is set out in section 3 in a similar but at least comprehensive analysis to that found in paragraphs 161 to 172 of our submission. Given the Fair Pay Commission question is resolved at the first hearing there seems little value in revisiting it and we say with respect to the Commission the submission is of no assistance to the Commission.

PN560

Turning to the position in the Tasmanian Government we note that that submission supports a \$20 wage increase or that decision supports a 1 per cent increase in nominal terms and a 1.3 per cent increase in real terms. While the unions support the general contentions made by the government about the economy we say that the support for the \$20 is at odds with the submissions and the facts. Above the C9 there has been a negative growth in award wages over the period 1995 to 2005 and that the 4 per cent increase that we seek will address that and maintain the relative value of wages.

PN561

We note that the Tasmanian Minister argument for why there should be a \$20 increase is breath-takingly brief. Perhaps the minister believes that it is so obvious that it doesn't need any argument. We would submit that it is not that obvious and that effectively a very brief statement saying the minister supports the \$20 is perhaps not the soundest basis to go forward and accept such an argument.

PN562

Now turning to the position of the TCCI we say that this submission is far more thoughtful and far more useful contribution on behalf of Tasmanian employers. In essence the argument between us is the level of enthusiasm for a future and a subsequent wage increase. We note that the TCCI is trying to literally have its cake and eat it too by admitting on one hand that it cannot do

otherwise, that the economy is strong, then using the same economic data as the unions and the Tasmanian Minister, but then go on to say that things might happen and therefore that this Commission should not grant the increase sought by either the unions or that of the Minister.

PN563

We say that this should be rejected as unacceptable. The reservations put by the TCCI are not supported by the evidence and turning to some of the specifics we say that their claim at 3.7, that in fact things are now radically different as a result of the decision of the Federal Government not the unions or the Commission, and again at 3.9 where they advance this argument about adjournment, it is worth noting that the TCCI which is an affiliate of the AWCI, wholeheartedly support it because they helped draft the radical attack on the industrial relations system. It is they who wanted to destroy national consistency, not the unions, but they now argue that oh yes, we helped draft this system to destroy it and to get rid of national consistency, but we say you should adjourn this to wait for the decision of our creature, the Fair Pay Commission about this. It is an interesting contradictory position. At paragraph 3 - - -

PN564

PRESIDENT LEARY: Isn't there an inconsistency created depending on who goes first anyway?

PN565

MR TULLGREN: I'm sorry, your Honour?

PN566

PRESIDENT LEARY: Isn't there an inconsistency created depending on who goes first anyway? I mean, if we wait for the Fair Pay Commission there is then a time lapse before we hear it. It doesn't mean that any of the State Tribunals would necessarily pick up the Fair Pay Commission.

PN567

MR TULLGREN: Well, that is correct.

PN568

PRESIDENT LEARY: The determination anyway, but there is an inconsistency regardless of when each particular Tribunal deals with the matter.

PN569

MR TULLGREN: That is right, that is equally correct, but we say that we focus on saying well, the way to avoid inconsistency is to wait for the Fair Pay Commission, which is on the presumption that everyone will simply adopt the submission of the Fair Pay Commissioner which if one was a betting person one wouldn't want to put too much money on it with respect - - -

PN570

PRESIDENT LEARY: Well, it is an unknown certainly at this stage.

PN571

MR TULLGREN: Yes. Turning to paragraph 4.3 this is the first real example of the-cake-and-eat-it proposition. They admit that the economy has plateaued and it has plateaued from very low levels, but it is not declining but it is running at high levels, but they try to say because it has plateaued this should restrict a wage increase. There is no evidence to show why the plateauing should provide a basis for granting the TCCI counter claim.

PN572

Again at 4.4 their position is for a \$13.50 increase. In fact, when you apply inflation to that proposed increase that creates a real growth reduction and we tendered the exhibit to show that. We also say that we have addressed the argument at 4.6 where they suggest that the claim the unions pursue is abnormally high and revolutionary. By the table we tendered at the beginning we show that the Commission has awarded higher increases in percentage terms in the past.

PN573

At 4.7 effectively they argue that any increase in wages should be reduced because of forecasts, not facts, and not based on the economic data that is continually showing there is a strong economy. What they say is because some forecast might lead at some time to believe there is a reduction or a decline in the economy, well, the facts and the predictions don't show that.

PN574

We note that the TCCI submission does not address the economic data provided in the Tasmanian Government budget papers which clearly address in great detail the state of the economy and the forecasts. At paragraph 6.3 we agree we need to look at the economic and social environments and we say that the economic environment is excellent and the social environment is going along but it can do with improvement and granting the unions' claim will assist in that improvement.

PN575

In relation to paragraph 6.4 we say that the application is about the low paid as well as protecting the integrity of the award system, as we have argued in the previous decisions and led to compressing of award relativities which affect the integrity of awards. We say that the point is coming where action has to be taken to restore the integrity of the system and the unions' application does that. At paragraph 7.3 we say that - - -

PN576

PRESIDENT LEARY: Just going back to 6.4. That could be read a couple of ways. Your application only seeks to amend the principles inasmuch as changing the minimum wage, which means that people on agreements or over-award payments any increase would be absorbed.

PN577

MR TULLGREN: Yes.

PN578

PRESIDENT LEARY: Yes.

PN579

MR TULLGREN: Yes, we said - - -

PN580

PRESIDENT LEARY: I am just wondering whether that - 6.4 seems to infer that the increase would go to everybody but the principles will apply?

PN581

MR TULLGREN: We accept that there was some ambiguity but we - on the basis that there had been no indication that would seem to affect the wage principles, we have taken the construction and we do - - -

PN582

PRESIDENT LEARY: Yes.

PN583

MR TULLGREN: - - - and clearly, as you say, we are not seeking an alteration to the wage principles.

PN584

PRESIDENT LEARY: Good.

PN585

MR TULLGREN: Turning to paragraph 7.3 we say that the unions' claim had a dual purpose and it is to do with relativities in wages and the 4 per cent increase will achieve both, unlike the TCCI position which will put the low paid further behind. At 7.43 we note that the TCCI stated that the AIRC has rejected the ACTU claim for presenting increases when in fact the reverse is true. It has been the AIRC which has questioned the continued use of both dollar amounts. At paragraph 7.7 the claim is made that the unions' proposal is not reasonable and fair but there is absolutely no evidence, it is just a statement that that is the case.

PN586

At 7.8 we say in relation to the principles we say there should be no change at the moment, we reserve our position. We note that work choices has changed things and there would be need to consider this. We also say that if this matter is of some concern then your Honour will be in a position to raise with the other State Presidents the possibility of looking at some joint development of consistent principles that could be considered.

PN587

In relation to the TCCI position at 8.2, this is about the number of people - we say that it is about 40,000 people - while there is some argument it is not significant. At paragraph 9.1 we agree there is a need to look at both economies but the uncontradicted data shows that both are robust and the outlook is equally bullish. You cannot gainsay this data. In relation to paragraph 10.1 we say the economy grew by nearly 3 per cent which is high by any standard, but the TCCI tries to gainsay this by saying it is high but it is not high enough and that therefore there should be no or a limited wage increase.

PN588

Again at 10.2 they try to gainsay the material but put no evidence to support that proposition. We note that the New South Wales Commission decision at paragraphs 66 to 69, they in fact progress these arguments and it is interesting to note that at paragraph 66 the Full Bench reproduce a summary of the employer's arguments, which are in the same or very similar words to the position put here in Tasmania and the Full Bench went on to reject all of those arguments at paragraph 67 saying:

PN589

Each of the foregoing risks identified by the joint employers was put no higher than it may occur. There was no attempt ..reads)...this example highlights the unhelpfulness of aspects of the joint employer submissions.

PN590

And we say it is the same here that the submissions are unhelpful because it doesn't provide any analyse or argument about why some of these matters may be at risk. At paragraph 10.7 the employers claim that the profits will be at risk if you grant the claim. Now, there is no evidence. They go on to show that business investment has risen by 24 per cent in the year which shows there is a clear strong economy and there is no sign of weakening. At paragraphs 92 and 93 again the New South Wales Commission dealt with exactly the same in a similar submission and made the comments that are contained in paragraph 93 and we say the same is true here in Tasmania.

PN591

At paragraph 10.10 they claim that prices may be accelerated but there is no evidence. At paragraph 10.4 they explain that labour price index is preferred. Preferred by whom and on what evidence? None is provided, perhaps it is simply preferred by the TCCI and that is not a basis for you to prefer it. The LPI is about showing the cost of the labour including costs like workers compensation which are not part of wages. They are premiums governed by issues such as accident rates. They have got nothing to do with wages or the composition of the work force and the LPI is in fact the volatile measure whereas the wages price index shows the rate of increase and the growth in wages in the economy and the AIRC which dealt with this in 2005 found it the most appropriate measure.

PN592

Again at paragraph 10.16 the employers seek to gainsay the facts that minimum employment is high but remaining high but warning that it might fall and therefore you should grant an increase. At paragraph 10.21 they say:

PN593

It is not the role of the Commission to ensure that a further reduction in unemployment occur ...(reads)... and even if there was evidence it is not the responsibility of this Tribunal.

PN594

Again, the New South Wales Industrial Relations Commission dealt with this at paragraph 116. We don't read that to the Commission but we say that they

have addressed this argument and they found against this argument and that is relevant here. At paragraph 10.23 the employers claim that wage increases cost jobs and they rely on one study, that is the Tulip study. We say the evidence does not support this, in fact we refer to discussion by the AIRC, also the OECD claim.

PN595

We also note that in the Western Australian decision they refer to specific research that was conducted in Western Australia and that is referred to at paragraph 121 and while that was West Australian based it dealt with the industries such as cafes, accommodation and restaurants which is agreed to be one of the major industries where this Commission's decision will have an effect, and show that over the period of time wage increases have not led to any reduction or significant reduction in employment.

PN596

We say that while you simply can't transpose that, we say that there is no evidence anywhere, including evidence commissioned by the Commission itself in Western Australia, to show that the granting of these wage increases, moderate wage increases, leads to a reduction in employment. At paragraph 10.25 the employers called in their labour current account deficit. The fact is that the current account deficit is not determined by moderate wage increases, it is affected by exchange rates and supply constraints.

PN597

Again, the New South Wales Commission at paragraphs 112 to 114 address the same or similar submissions made by the TCCI and after setting out the employer arguments at 112, they go on to dismiss them saying that they are bare statements that are at least helpful, and that there is no evidence to assist. At paragraph 10.28 we say that the best way of addressing this part of the deal with exchange rates is to refer to the two examples which show some that they are dammed if they go up and some that they are dammed if they go down. Exchange rates are not an element which this Commission has any control over therefore being influenced by such matters as the current account deficit are totally unhelpful.

PN598

At paragraph 12.5 again they admit that the economy is at sustainable levels, however they argue that the sky could fall in and therefore you should limit the wage increase. At 12.7 there is reference to skill shortages and based on the TCCI position of decreasing minimum wages, the skill shortage will become worse. You need to increase wages to attract skilled labour. A flat dollar increase is a disincentive to attraction. What is required is a real wage increase not a decrease.

PN599

At paragraph 12.8 the material they refer to has been addressed by the Government in the budget papers and that they show that what the TCCI is arguing for is not as bad as in fact they would put. At paragraph 12.11 we say that you have to question what is the serious risk that has been referred to. It is a broad statement. There is no evidence that the granting of the claim will have any impact on inflation or employment and we have actually identified

specifically the costing or the impact we say that occurred and in paragraph 12.3 they argue about the big issue by the unions. We have already said that there is an over-estimation by including the transition of employees, not an under-estimation as claimed.

PN600

There is no dispute about business on-cost increases but it is impossible to say by how much because there is no data. If there were one would presume that employers would have produced it. At 13.8 we say that the claim is about keeping - this claim about keeping in touch is fanciful in the sense that the TCCI put it. The difference between award-reliant and agreement-reliant wages is quite high and that is now settled. It is not a matter of speculation. The fact is that the low paid cannot bargain. Perhaps the assumption is that the low paid should be presented with starvation and eviction as an incentive to bargain which would be more like an incentive to a revolution.

PN601

We note that the TCCI argues that the 4 per cent increase is too high and that they - the increase they propose is under-pinning in part by the survey which they attach as attachment 3. In dealing with that survey we say this. The survey is based on survey returns and is therefore unscientific sampling. It is based on survey returns and therefore the motivations of the respondents will affect the outcome. The report carries no central analysis and no analysis based on size of employer. The index starts at a base of 50 and is adjusted up for the percentage with positive expectations and down for those with the negative.

PN602

It is a survey of 191 businesses employing 5 per cent of the Tasmanian workforce. A score of 50 means equal number of wolves and bears, which I am instructed is their term. A score of 48.4 over a sample of 101 employers suggest that about 94 see growth prospects and 97 don't. It is therefore open to the question as to what industries and sectors are feeling negative, what size of employers are feeling negative and as they have all been granted equal rating it is fair to ask what is the relevance of the numbers other than an imprecise indication of sentiment.

PN603

In 2004/5 we saw a similar number in the index. The end result for the next 12 months was a growth in finance both the mean and the 5.2 per cent, a figure expanded - exceeded by the mining boom States of Western Australia and Queensland. We would also submit that this survey is not the only survey the businesses made available to us. A similar survey is conducted by the Telstra Information, currently Sensis, and we have tendered a copy of that. This survey specialises in small to medium enterprise, the end of town most likely to be affected by this claim.

PN604

It surveyed 150 Tasmanian businesses by random selection telephone interviews and found that 72 per cent of those surveyed voted positive in their own assessment of their business prospects for the coming year, and only 13 per cent negative. We accept that this too is only an indicator of sentiment but

if we take the two surveys one showing three-quarters are positive about their prospects, and the other saying they half expect to see growth in the coming years it is reasonable to conclude that far from being gloomy there is an air of optimism.

PN605

It is our submission that the importance of sentiment be noted but that a detailed economic forecasting by the Treasurer will enable this to carry far greater weight in these proceedings. We also say about the Tasmanian survey that it does not address the Tasmanian Government data. The TCCI fall-back position is that an increase should be based on the CPI. The proposed increase means that award wage employees other than those employed at C14, 13 and 12 will suffer a real wage reduction. This cannot be described as a regional wage adjustment. It will not allow the lowest paid to keep in touch with other workers.

PN606

As we have shown, the CPI has not kept pace with costs of the three largest expenditure items, housing, food and transportation. The CPI then is not a fair basis for awarding an increase. Previous Federal and State decisions have not been based on the CPI but on a confluence of factors that have been greater than the CPI. The granting of flat increases by the AIRC is more a reflection to the old Act requiring paying special attentions to the needs of the low paid with implies a flat increase. I note that there is nothing in the Tasmanian Act requiring flat increases.

PN607

In relation to the question of fairness which we have dealt with at paragraphs 104 to 139, we say that the granting of the application will ensure awards provide a fair to the wages and conditions, their decision is equitable and just having regard to the interest of persons immediately concerned with the Tasmanian economy, protect those with no voting power. The flow-on test did test and ensure fairness by maintaining the level of or minimum wages

PN608

In conclusion I would say that the application is unique, not revolutionary or a leap in the dark in that it has progressed without having a decision of the AIRC pre dated. The Commission has the legislative obligation to consider such an application for those workers who remain within the judgment of this Commission. To await, as suggestion by the Commonwealth and the employers, the outcome of the Fair Pay Commission is to suggest that the Tribunal's legislative obligations are aligned to or subordinated to those of the Fair Pay Commission.

PN609

As we have comprehensively argued both in the adjournment and in this hearing, there is no alignment. The flow on of fair wages and reasonable minimum wage adjustments can help address wage disparity and wage inequality and income inequality. A reasonable safety net adjustment, that is the 4 per cent, will provide a particularly important source of income for lower paid workers. In 1750 George Frederick Handl, who is arguably England's greatest composer, wrote an oratorio called Theodora which tells of

persecution - the story of persecution of Christians in the Roman occupied 4th century Antioch and in particular the struggle and death of Theodora who speaks out in defence of Christianity. In the first act there is a discussion about virtue in which the character, Irene, talking about prosperity says that:

PN610

It is the bane of virtue, the nurse of passion is the soother of vile inclinations such as prosperity thy named.

PN611

Our application seeks that some of the undoubted prosperity of Tasmania apply to the low paid. The Commission needs to consider the legislative requirements of it, the uncontested material presented by the unions and ask does the quantum provide a fair safety net. The answer, with respect we say, to those questions is yes.

PN612

PRESIDENT LEARY: Mr Kleyn, are you putting any submission - - -

PN613

MR KLEYN No.

PN614

PRESIDENT LEARY: - - - or you are just here for the show? all right, who is it going to be, Mr Barker, Mr Watson, Mr Watson, Mr Baker? Mr Baker, thank you.

PN615

MR BAKER: President and Members of the Bench, before I comment in relation to our submission I do owe the bench an apology for the lateness of the submission as presented and I formally will do that on the record this morning.

PN616

PRESIDENT LEARY: Apology accepted, thank you.

PN617

MR BAKER: Insofar as our submission is concerned we stand by its comments and I note the comment by Mr Tullgren in relation to the flat increase versus a percentage increase. The basis of our submission is to provide relief at the minimum wage level and that is encapsulated in the paragraph on page 2. We say that to address the issue of relativities between wage groups as contained by the - within or without certain awards of this Commission is an exercise for another occasion.

PN618

I take your comments, President, in relation to what, for example, the Metal and Engineering Award in exhibit TTL7 as displayed this morning and note that relativities certainly have become compressed between the C14 and the C1B level and I accept the point that you make that those relativities as expressed in dollar terms, have in some instances become almost meaningless, but as I reiterate, that is in our view a matter for another day and another application.

PN619

Insofar as our submission is concerned I don't want to go through the comments contained therein, I think they are self explanatory but I do place on the record a couple of matters. We believe or the Minister believes the proposed adjustment to award rates of pay for private sector employees can be sustained to Tasmania's strong economic performance characterised through sustained jobs growth; reduction in unemployment; robust private sector investment and the development of major infrastructure projects and we note at page 3 of our submission that the key factors that drove the economy in 2006 was sustained jobs growth in all regions of the State; a substantial reduction in unemployment; strong business sector investment; continued growth in consumer spending; increases in household wealth; population growth and a buoyant construction industry and we note that in the coming financial year it is expected that there will be continued strong economic growth driven by investment and consumption spending growth and the value of exports; future growth in employment; major projects including those undertaken by the State Government businesses that will benefit the Tasmanian economy both directly and indirectly; available monetary conditions with low and stable inflation; and relatively low nominal real interest rates; an expanding export sector due to favourable national and global economic conditions.

PN620

Now, we also note at page 7 of our submission that in fact previously of course the economy has had cycles where the experienced boomer bust, "the economic growth", but you will note at page 7 under the summary the 2005/2006 Tasmanian budget papers address this issue and noted that there are several major structural changes to our comment that are expected to lead to the underlying strength in our economic performance in future years and those changes include the transformation of the State's fiscal position including the elimination of State nett debt, which has supported improved tax preparedness as reflected in Tasmania having the second lowest taxation severity of all the States; the growth in Tasmania's productive capacity to increase private and public investment; that strange word "modelled" competition which is a newy on me, in the anti-sector, I understand it is actually a mode of competition in the anti-sector, and enhanced security of energy supplies arising from Basslink and the Tasmanian Natural Gas project and a significant increase in high school retention rates will lead to a more skilled workforce which of course has been the subject of much discussion by all the parties at this table in not only this forum but in other forums as well.

PN621

Members of the Bench, we support an increase as outlined by our submission of \$20. We believe that such an increase is sustainable. The growth in the Tasmanian economy for the last 12 months has been 3 and a half per cent which exceeds that of the national economy which was 3 and a quarter per cent. Our employment continues to grow, our economy is robust, the inflation rate is around 2.83 per cent and to provide an increase to the low paid it is necessary as has been outlined by Mr Tullgren, that you do need to lift wages a little more than the inflation rate to grant some relief and with interest rates

remaining steady our export economy buoyant, we say that the economy, the private sector economy of Tasmania can afford this increase and we believe that the application as submitted by the TTLIC satisfied the obligations imposed on it by section 36 of the Act. Accordingly we will ask you to give consideration to increasing the minimum wage by \$20 a week. Thank you.

PN622

PRESIDENT LEARY: Could I just put to you, the application only seeks to increase the minimum wage in - or the award wages in private sector awards so it doesn't have any effect on public sector awards. I take it the submission would be the same if the application sought to increase public sector awards as well?

PN623

MR BAKER: If that application was made. I have no instructions on that, President, but clearly I have advocated on behalf of the Government in earlier proceedings that adjustments should be made to award wages consistent with decisions that flow from private sector outcomes in previous State wage matters.

PN624

PRESIDENT LEARY: I will take that as a yes. You know my view about the circumstances of public sector awards in this jurisdiction. We won't debate it here, but you are on notice. Thank you. Mr Watson?

PN625

MR WATSON: Thank you, President. The primary position that we put to you in our submission stands. However, I don't intend to go to that matter in any detail today other than to say that it has been put to you as the primary position. We understand that those issues were addressed in the April decision and we didn't put that as a primary position on the basis of trying to offend the Commission but simply to restate our primary position.

PN626

Our secondary position is that we believe that an increase of \$13.50 per week, which is based on a CPI increase in the minimum wage, would be a reasonable outcome from these proceedings. Now, if I can say in coming to that view, President and Members of the Bench, it was based on the feedback that we got from the membership so simply what we did was went out to the membership and said for unincorporated bodies the claim is 4 per cent, do you oppose it, do you support it; if not what do you think is sustainable? So that is all I can say to you - - -

PN627

PRESIDENT LEARY: So the CPI was the generally accepted - - -

PN628

MR WATSON: The CPI was - now, I would also have to say that there were - that wasn't the unanimous view. There were some views either side of that, but generally the CPI seemed to be the most common view of the membership, so simply put, we took that view. Also looked on the basis of where the economy was in 2006 and that formed our submission. We would say that as

far as the economy is concerned and I think it comes out in the papers that we have put - attached to our submission, that there has certainly been a plateauing in the Tasmanian economy. It is certainly on the level now where certain things need to happen to make sure that we maintain that position, but it is certainly not continuing the spike that we have seen in previous years. And, equally, the submission that we have put about the \$13.50 is based on the fact that we have a plateauing economy as opposed to an economy that was growing in '03, '04 and '04/05, hence the level of increase that has been awarded in previous years.

PN629

I note that the TTLC has sought to table the West Australian and New South Wales decisions, which I think I would do if I was in their position.

PN630

Coming to these proceedings we thought that those two decisions perhaps would have been unhelpful to our position, however, the South Australian, in a timely fashion, have issued their decision late yesterday, as I understand it. I haven't actually had the chance to read through it but I understand what the bottom line is, so we would suggest that the \$20 per week ordered by the New South Wales and West Australian Commissions certainly does not create any precedent whatsoever for this Commission.

PN631

Our primary position, based on the other States would be that we understand that the 2006 Tasmanian State Wage Case is exactly that, a State wage outcome for the State of Tasmania. We understand that the bench has rejected our position of national consistency, waiting for the Fair Pay Commission, etcetera. We would suggest that if we are looking for an independent decision based on the Tasmanian situation that it be exactly that, so, therefore, we don't believe that the New South Wales and Western Australian decisions - I suppose I would be hesitant to put to you, you don't take account of it but it would be our strong submission that this decision be for the State of Tasmania and based on our circumstances.

PN632

PRESIDENT LEARY: Well, the Trades and Labour Council are looking for a 4 per cent increase which is neither WA or New South Wales. Admittedly, Mr Tullgren has relied on some of the commentary, talking about the economics, etcetera, etcetera, but I don't think he is saying that that sets a precedent?

PN633

MR WATSON: No, no, I wasn't - - -

PN634

PRESIDENT LEARY: That the outcome of the decision sets a precedent.

PN635

MR WATSON: No, no, I wasn't suggesting that that was their submission. They are my words, President, not the words of the Union Tas.

PN636

PRESIDENT LEARY: Yes.

PN637

MR WATSON: Just a couple of comments that I want to make about what is being said in relation to the submissions of Unions Tas. I think Mr Tullgren referred to agreements, or some agreements running at 4 per cent per annum. We would agree with that and we have found that the quantum coming out of agreements have been around the 4 per cent mark, some slightly under, some slightly over. We would suggest that to provide a safety net adjustment, which is effectively running at the same value of agreement-making, is not the way things should be. It should be the safety net that underpins workplace bargaining. So we just make those comments about that. As far as the Tasmanian survey business expectations is concerned I think we can make the statement that we believe, and it says in the document, and I quote:

PN638

The Survey is unchallenged in terms of being the most authoritative, timely and comprehensive snapshot of Tasmanian business expectations available.

PN639

I think that it has stood the test of time in terms of it is one survey, I accept that, and it applies to a certain number of businesses in certain circumstances, but we believe that it does have the credibility to be the most authoritative survey available and that is why we put it in as part of our submission. I just wanted to go to one issue in relation to Tasmania's productivity rates, and if I can just table an exhibit, please?

PN640

PRESIDENT LEARY: Mark that TCCI2.

EXHIBIT #TCCI2 GRAPH, PRODUCTIVITY RATES

PN641

MR WATSON: Now, this document, President, goes to the national scene in terms of Tasmania's productivity and it was briefly referred to by Mr Tullgren, not this graph, but the issue of productivity. Tasmania is certainly at the bottom of the tree in terms of productivity rates across the country and that gap has not decreased over time, in fact, that lag, or that gap has increased over the last 10 years and certainly, if you have a look at the gap, sorry, the graphs, you can see there that West Australia particularly, and New South Wales are right up the top of the tree in terms of productivity rates and it is an issue for Tasmania that needs to be improved if we are going to sustain our growth of the economy, and also to be able to compete with the rest of the country.

PN642

So I don't seek to go to that document any further other than to point out that certainly Tasmania lags a fair way behind in that particular indicator. And this is also supported in the State Government submission. If I read it correctly, at page 13, where the State Government says in the middle there:

PN643

The lower levels of AWOTE in Tasmania reflect in part lower labour productivity.

PN644

Just a couple of other matters. I don't intend to go to any detail about our submission. We stand by the submissions. We don't intend to go to any further comments about the other submissions that have been made other than to say that when you talk about the cost for the Tasmanian economy, we might be talking about .17 to the wages bill and I accept that that is an economy-wide cost, but it is not .17 per cent for an employer. An employer who may be faced with the TTLCs claim, it will cost them 4 per cent and I don't think there is any way that we can get away from that. So if you are an employer that is going to be covered by this decision it will cost 4 per cent, not .17 per cent.

PN645

Just a couple of other housekeeping matters, I guess, or matters of process that I just want to put to the bench. The first one is the operative date. We put in our submission that we support a one, or the first full pay period on or after 1 August if the Commission is minded to make a decision based on the quantum of the increase and provide that increase. Note that 1 August is not all that far away and would request that if the Commission is in the position to make a decision that it come down at the earliest possible date, to at least give employers enough time to be able to decipher the decision and put it in place.

PN646

PRESIDENT LEARY: I hope it won't take too much deciphering? We do try to make them quite clear and concise.

PN647

MR WATSON: The only point I would make, President, is retrospectivity is a huge issue for employers and at least if they are given some notice in a prospective sense that would certainly be appreciated. The second issue is that incapacity to pay is always an issue in every State - - -

PN648

PRESIDENT LEARY: I was going to raise that, on your point that some employers may have difficulty funding it. I am not aware of any incapacity to pay argument that has ever been run?

PN649

MR WATSON: No, although it is something that we make sure is there as a safety net, I suppose, for an employer that might find themselves in that position. However, this is something that the Government may, or may not be able to answer today, but we have a lot of members who are funded directly from Government, so I would presume that the Government's position in supporting \$20 a week would mean that they would fund that if that were the decision of the Commission. But that is - - -

PN650

PRESIDENT LEARY: I hear what you say.

PN651

MR WATSON: That is only our view. The Government might have a different view.

PN652

PRESIDENT LEARY: I am sure they will tell you.

PN653

MR WATSON: And I will refer particularly to community-type organisations who will simply tender for services and provide those services on behalf of the Government, or in their own right. The final point I would like to make, President, and members of the bench, is that we would strongly urge the Commission, if you are minded to make a decision in this matter, that you make it very clear that, on behalf, I suppose, employers generally within the State, fairness would suggest to us that if this decision is made from 1 August that you make it very clear that that will be in for another 12 months; that there would be no ability to go for any sort of top-up.

PN654

The reason we say that is that if it isn't the decision, and we would accept that, that we at least continue the situation that has been in place for some time and that is that that would be the safety net for the next 12 months and then it be up for grabs again on 1 August 2007. If it pleases.

PN655

PRESIDENT LEARY: I think we are restricted by the legislation, are we not, that it just - it provides that we look at a State wage case or a minimum wage annually?

PN656

MR WATSON: The minimum wage, President, yes.

PN657

PRESIDENT LEARY: Yes, so I don't think there can be a second go whatever the circumstances.

PN658

MR WATSON: No, that is fine. Happy with that. If it pleases.

PN659

PRESIDENT LEARY: Right, thank you. Mr Rice, did you want to add anything?

PN660

MR RICE: Other than, your Honour, to fully support the submissions of the TCCI.

PN661

PRESIDENT LEARY: Thank you. Mr McDougall?

PN662

MR McDOUGALL: Yes, I would be in the same position, your Honour, we support the TCCI in this.

PN663

PRESIDENT LEARY: All right. Thank you. Mr Cole?

PN664

MR COLE: Thank you, your Honour. If the Commission pleases, the Commission has the Commonwealth's written submissions in exhibit Commonwealth 1. The Commission will appreciate that these written submissions are in support of the Commonwealth's position that the Full Bench should complete the present hearings but, with respect, should still not await the determination of the Australian Fair Pay Commission in the spring 2006 before itself determining the present application.

PN665

And the Commission will be aware that the Commonwealth has been intervening in each of these State wage cases supporting the maintenance, as we put it, of national consistency in the minimum wage adjustments. Now, true it is that decisions have been handed down now in three States and the Commonwealth makes no comments on the appropriateness of the quantum that has been awarded in each of those decisions, but the Commonwealth has expressed, and I repeat here, its disappointment that these States have broken with the long-standing practice of State Tribunals following the key Federal decision.

PN666

Now, of course, at the national level the Australia Fair Pay Commission is now the body under the Federal Act that will make the key Federal decision. Its decision will have the greatest reach of any of the decisions on minimum wage adjustments. It will cover two-thirds of all reliant employees, that is two-thirds of all award-reliant employees in Australia that come within the jurisdiction of the Fair Pay Commission. That is the combination of employees employed by incorporated businesses who are award-reliant, and other award-reliant employees, for example, in Victoria who are under the Australian Fair Pay Commission's jurisdiction by dint of other arrangements.

PN667

But we emphasise that the Australian Fair Commission's determination will cover two-thirds, at least two-thirds of all award-reliant employees. Now, it will, in fact, be more than two-thirds because, I am sorry, the Federal jurisdiction will ultimately cover more than two-thirds because of the so-called residual employees who remain within the jurisdictions, the Australian Industrial Relations Commission for a period of five years.

PN668

PRESIDENT LEARY: Mr Cole, I don't think any of this has been challenged. We have accepted that sort of submission previously. I don't know whether we need to hear it again.

PN669

MR COLE: Yes, your Honour, and so I thought I might be challenged, your Honour, on the point that, about national consistency, so, obviously, we put, notwithstanding the decisions in the States, we still point to the consideration

to which I have drawn attention to emphasise that the issue of national consistency is still a real and important issue.

PN670

PRESIDENT LEARY: But doesn't the system that we live with create inconsistency by its very nature anyway?

PN671

MR COLE: Well - - -

PN672

PRESIDENT LEARY: I mean, if we wait until the Fair Pay Commission, there then is a gap before we can do anything and we may not take the Fair Pay Commission into consideration anyway. So we are moving into a whole new world and I don't know whether consistency is going to be the end result, in fact, I think quite the opposite.

PN673

MR COLE: Well, your Honour, none of us can speculate on what the ultimate outcomes may be but we can look to history and to the very long-standing practice that virtually all parties have supported in the past, of maintaining national consistency including, as I understand from the TTCIs Commission, this honourable Commission, which I understand since its inception has followed the Federal decision.

PN674

PRESIDENT LEARY: More or less.

PN675

MR COLE: Yes.

PN676

PRESIDENT LEARY: There are a few little divergences.

PN677

MR COLE: So we say that, with respect, this Commission can still play its role in what we say is important in the public interest, that is to maintain as far as possible, national consistency and that - the scope to do, to play its role in pursuit of that public interest objective is still available to this Commission. We do commend that the Commission should await the Fair Pay Commission's determination. We are not saying that the Commission is beholden in any way to the Fair Pay Commission's determination, but we point - we do say that the Fair Pay Commission will be approaching the determination of the minimum wages and the minimum wage adjustments in a new and different way.

PN678

What is essentially new and different about it? What is essentially new and different about it is that it will be adopting a consultative and not an arbitration approach. Now, my friend from the TTLC rather lampoons the attachment to Commonwealth 1 references to minimum wage-fixing practices in various countries. He was particularly attracted, it seemed, to the practice in Spain. But what is the main point really that comes out of that attachment, I would

suggest that the main point is that all these other OECD countries don't fix minimum wages via an arbitration process.

PN679

PRESIDENT LEARY: There is not much consistency either, is there?

PN680

MR COLE: Well, they don't fix it that - they are consistent in that regard, your Honour, and - - -

PN681

PRESIDENT LEARY: Their inconsistency is consistent, yes.

PN682

MR COLE: And there are other points of consistency as between many of those OECD countries, but this is the key distinction, if you like. Now, this is not - to point to this difference is in no way to be critical of the Commission. The Commission is - works in a situation where it is essentially engaged in arbitration proceedings and they are accompanied by traditional approaches. The Fair Pay Commission's consultative approach is - will be different and, of course, the Fair Pay Commission can, and has indicated that it will be commissioning its own economic and social research. So it is a new and different way of addressing the issue of adjusting minimum wages.

PN683

We make no secret and don't apologise for our view that it is a better way to approach the adjustment of minimum wages and because the State Commissions themselves are involved in adjusting minimum wages, so it follows as a matter of logic that it would be in the public interest for the Commissions to at least see what the Fair Pay Commission does and to determine whether that satisfies the requirements of the respective legislation bearing on the relevant Commission and meets the merits of the cases as presented by the parties.

PN684

So it is not a question of waiting to simply adopt, it is a question to wait and see what the outcome is and whether that outcome satisfies the criteria to bear on the exercise of this Commission in this role. Now, the unions tend to invite you to the view, to take the view that it doesn't matter what the outcome of the Fair Pay Commission's determination is, it could never satisfy your requirements under your Act. Now, that is just an untenable proposition and we, with respect, warn the Commission against being beguiled into accepting that perspective.

PN685

PRESIDENT LEARY: I think this Commission will exercise its statutory requirements and take into account the submissions of the parties.

PN686

MR COLE: Yes, we are - - -

PN687

PRESIDENT LEARY: And the AFPC is not something that we have to take into account, any determination of the AFPC.

PN688

MR COLE: No, your Honour, but, of course, what is dominant in the Tasmanian Industrial Relations Act on our understanding, as the criterion for the Commission is the public interest and, of course, I have been at some pains to relate what I have been saying to the public interest.

PN689

PRESIDENT LEARY: Sure.

PN690

MR COLE: Now, that is also important to be clear right at the outset that the minister is not here putting a position on the merits of the present application. My friend from the TTLIC did say, as I understood him, that the Commonwealth was opposing any increase. Well, let me repeat: the Commonwealth is not here putting a view on the merits of the TTLICs application. It is not true to say that the Commonwealth is here opposing an increase. We are not expressing a view in respect of the merits of the claim and the reason we are not doing that is because we are not in a position to anticipate the process in which the Commonwealth will be involved relating to the Australian Fair Pay Commission's own processes.

PN691

The Fair Pay Commission has called for written submissions by 28 July and the Commonwealth is still in the process of considering whether it will be making a submission and what the content and nature of that submission will be. And that is the reason we, at this stage, cannot put a view because it would be inherently contradictory for the Commonwealth to be commending that the Commission await the outcome of the Fair Pay Commission determination and yet putting no view. So we do want to emphasise that our submissions go to the question of the timing of the decision.

PN692

Now, it is also said against the Commonwealth that in some way we are hesitating or promoting a wage freeze, and the Commonwealth has consistently made it clear that it is open to the Fair Pay Commission and we would say, in like manner, it would be open in due course to this Commission to have regard to the fact that, clearly by the time a determination is made in the spring of 2006 the elapse of time since the last wage case decisions, Federal and State, will be longer than it has been in the past. That is an issue, that it will be open to the Fair Pay Commission to have regard to and to take into account and to deal with as it considers appropriate, and in the light of the material and submissions made by the parties who make submissions to it.

PN693

And, of course, the Fair Pay Commission is enjoined to, not only to hand down a decision but to provide reasons and that matter may well be a matter that is dealt with by the Fair Pay Commission. So in the same way that it is open to the Fair Pay Commission to consider that issue, we say it will be open

to the Tasmanian Commission and it is not, in our view, reasonable to assert that the Commonwealth is therefore promoting a wage freeze. Now, there was a lot of hyperbole in my friend's presentation and it would appear that he is not necessarily totally supportive, or his clients are, of the changes to the Federal Workplace Relations Act.

PN694

PRESIDENT LEARY: I don't think he is alone in that, from what I hear.

PN695

COMMISSIONER McALPINE: Very observant.

PN696

MR WATSON: I am not sure I was putting that position.

PN697

MR COLE: But whilst my friend and his clients are entitled to their view we don't appreciate the comments of the type that were made that were quite derogatory in our view, about the - in certain respects about the role of the Fair Pay Commission and so on. Now, I don't take the Commission's time to respond more fully but we say - - -

PN698

PRESIDENT LEARY: I think we get your message.

PN699

MR COLE: Yes, thank you, your Honour.

PN700

PRESIDENT LEARY: Can I take it then that the Commonwealth position now is that we should await the determination of the Fair Pay Commission, and I just hope spring isn't late this year, before we make a determination? Is that generally what you are putting?

PN701

MR COLE: Yes, your Honour, we also do want to briefly address the effect of the legislative amendments to the Industrial Relations Act because as this presently stand, the observations of the Commission and its decision of 26 April 2006 at paragraph 55 are against us, and whether the Commission will recall that the Commission was of the view that this was in the context of an application by my friend, Mr Watson, that the requirements of the Act would be met provided a decision when the Tasmanian minimum wage was made by the end of 2006 and the Commission disagreed at that point and that that would satisfy the requirements of section 35(10)(a).

PN702

Now, with respect, there was a rather truncated debate it would appear from the transcript, on this issue and the Commission's reasons in arriving at the view expressed there, with respect, it seems to us on reflecting, a rather truncated debate. I don't think the Commonwealth made any submissions - - -

PN703

PRESIDENT LEARY: No, it didn't.

PN704

MR COLE: - - - on this point but it is a very important point because, to our understanding this is the first time the Tasmanian Industrial Commission is determining the new concept of the Tasmanian minimum wage. And when I say "new concept" I am not necessarily alluding to the Tasmanian minimum wage as a component of the set of minimum conditions that the legislative change catered for in the new division that was inserted, division 2, that was inserted into the Part III, I think it is, of the Industrial Relations Act. Now, of course there is - there had already been established in the Act in section 35(1)(b) scope for the Commission to make an award and it says:

PN705

...making provision for or altering a minimum wage that is to be payable to adults without regard to the work performed.

PN706

So just in developing my arguments I will call that The Award Minimum Wage and Tasmanian Minimum Wage as introduced by the legislative, or provision for which is made by the legislative amendments, of course, is referred to in section 47(a)(b) which says that:

PN707

A minimum weekly wage for an adult ...(reads)... as determined annually.

PN708

And there is the reference to "annually" -

PN709

by the Commission under section 35(10)(a) -

PN710

and 35(10)(a) is talking in terms of:

PN711

The Full Bench must convene and conduct a hearing annually to determine the Tasmanian minimum wage.

PN712

So 47(a)(b) and (10)(a) are obviously interlinked and - now it may well be that in due course the Commission determines that the Tasmanian minimum wage and the wage determined under section 35(1)(b) should be the same. That may well be the outcome of the Commission's determination but, of course, that is something which was within the discretion of the Commission to determine. It may be that the parties participating in this hearing made submissions under a presumption that that will be the outcome; the point we make is that, even though it is for the Commission to determine whether those will be the same.

PN713

Now, that then invites slightly more intensive consideration into just how the legislative change does bear on the timing of the determination of the Tasmanian minimum wage, particularly, again emphasising that what these proceedings involve as we understand it, is the first determination of the

concept of the Tasmanian minimum wage. So the question might be asked: well, what does "annually", "determine annually", mean? And now, obviously, as a minimum it means that there would have to be hearings yearly. "Annually" means, essentially means yearly, but it does not necessarily indicate whether we are talking about a calendar year, a financial year, or a year commencing on any particular date.

PN714

Now, certainly, after the first determination is made, in other words, after the outcome from these proceedings, there will be then a determination - a determination in each year from that point.

PN715

PRESIDENT LEARY: Which is what has happened in the past. I mean, we have determined a State minimum wage with every State wage case.

PN716

MR COLE: Well - - -

PN717

PRESIDENT LEARY: It may not have been called the Tasmanian Minimum Wage, or whatever, but it is a minimum wage that has been set for the State in every wage case with an operative date of August.

PN718

MR COLE: Well, which has operated in the awards to the Commission.

PN719

PRESIDENT LEARY: Yes. Yes.

PN720

MR COLE: But division 2 operates outside the awards of the Commission as well.

PN721

PRESIDENT LEARY: I see, so that is the technicality that you are raising?

PN722

MR COLE: Well, it is a legal difference, your Honour.

PN723

PRESIDENT LEARY: So that changes the definition of "annual"? Is that what you are saying?

PN724

MR COLE: Well, actually, we are saying that there is no definition of "annual" in the legislative change.

PN725

PRESIDENT LEARY: Well, the commonly-known definition of "annual"?

PN726

MR COLE: Well, as I said, it could be - there are many commonly known definitions of "annual".

PN727

PRESIDENT LEARY: Yes, it is usually 12 months.

PN728

MR COLE: Calendar year, financial year.

PN729

PRESIDENT LEARY: Yes, but none of them are more than 12 months?

PN730

MR COLE: Yes, Deputy President, I - well, it could be - if one takes the view that, we are talking about successive year starting 1 January and finishing on 31 December, a determination annually, if it means each year, could perhaps mean - - -

PN731

PRESIDENT LEARY: Well, it says "annually" and it must - it means not more than 12 months, does it not?

PN732

MR COLE: Well, in any event, well, I just - that probably would be the more customary determination.

PN733

PRESIDENT LEARY: We are a simple-minded Tribunal, we like to adopt a simple approach to things.

PN734

MR COLE: No, well, no, I don't accept that what your Honour asserts about the character of the Tribunal.

PN735

PRESIDENT LEARY: As to definitions that we are discussing we like to adopt the simple approach; annual, is 12 months.

PN736

MR COLE: But we do emphasise that, so you have got a legislative change that puts in a new concept to fulfil a new and different role outside the - operating outside the compass of awards and the legislation doesn't say when this annual period starts. Now, it is probably the better view in those circumstances that in the absence of the legislation making that clear it is probably the better view that the time that the first determination is to be made within a year from the commencement of the legislation. This is in the absence of the legislation itself saying anything about when the first determination is to be made. It is to be made annually, but we say the better view in the absence of a specific provision is probably that it is within 12 months from when the legislation commenced, which I understand was in February 2006.

PN737

PRESIDENT LEARY: I think that is about right.

PN738

COMMISSIONER McALPINE: But obviously, this is within 12 months February.

PN739

MR COLE: Well, I am not sure, Commissioner, I - well, it is certainly open - I am sorry, I do understand the point. We are not saying it is a matter of discretion that it is not open to the Commission to adopt an August 2006 date. We are really directing ourselves to what we perhaps read into that view expressed in the 26 April decision that the Commission was inclined to the view that as a matter of law the Commission had to determine the Tasmanian minimum wage by August 2006, and what we say, with respect, is, we don't support - - -

PN740

PRESIDENT LEARY: The legislation doesn't say that.

PN741

MR COLE: The legislation - - -

PN742

PRESIDENT LEARY: That is what you are saying?

PN743

MR COLE: - - - doesn't say that.

PN744

PRESIDENT LEARY: Yes.

PN745

MR COLE: Now, we say - we would acknowledge it is open to the Commission but, so the situation as we see it comes down to this, that the Commission, under section 36, must - is primarily governed by the public interest. It must be satisfied that any award made is consistent with the public interest. That is the overriding criterion. We say it is a matter of law a decision does not have to be made by August 2006, so if there were public interest considerations that persuaded the Commission to bring a decision down after that date, such as the public interest issues that the Commonwealth is emphasising about awaiting for the spring 2006 determination of the Fair Pay Commission well then it is open to the Commission to do that and it is not inconsistent at all with the public interest test to which the Commission must have regard.

PN746

So it comes down perhaps to a question of balance. You must, with respect, have regard to the public interest. We say there are public interest grounds that would justify, even warrant you awaiting the determination of the Fair Play Commission in the spring. There are other arguments the Commission must make up its mind as to what it considers is consistent with the public interest and it is relevant in that regard that the South Australian decision didn't, to our understanding, scoff at the Commonwealth's proposals and it was quite the contrary, in paragraph 90 they took that on balance. They say:

PN747

Given those considerations and the developments to date we consider on balance ...(reads)... the outcome of the AFPC process.

PN748

PRESIDENT LEARY: I wouldn't like you to think that we had scoffed at any of your submissions - - -

PN749

MR COLE: No, I didn't - - -

PN750

PRESIDENT LEARY: - - - or those of anybody else.

PN751

MR COLE: I didn't mean to imply that, your Honour.

PN752

PRESIDENT LEARY: No, I realise that, but paragraph 55, we haven't made any reference to the 1 August, or to August, we have just said that annually is 12 months and not as was put to us that it is more than 12 months.

PN753

MR COLE: Yes. Well, I think we have made our position clear but - - -

PN754

PRESIDENT LEARY: Yes, you have.

PN755

MR COLE: But if we have - in that respect, now, while I am addressing paragraph 36 the Commission, of course, is provided with further guidance as to particular matters to which it should have regard in considering the public interest and what we would like to suggest to the Commission is that these criteria overlap to a significant degree with the criteria for the so-called parameters for the Fair Pay Commission. And the first, of course, is that the Commission must consider the economic position of any industry likely to be affected by the proposed award or agreement. And second, the economy of Tasmania and the likely effect on the proposed award or agreement on the economy with particular reference to the level of employment.

PN756

So it is not only in the Commonwealth Act that the body determining wage adjustments is enjoined to have some regard to employment issues, that is equally relevant, in my respectful submission, to the Tasmanian Commission, this Full Bench. A few points that we would briefly make by reference to these criteria, and I would like to take the time to ask the Commission to look at the parameters from the Fair Pay Commission, they are in evidence, but the - we would submit that both the Fair Pay Commission parameters and these criteria for the State Commission, they either directly, or inherently call for close scrutiny of the likely impact of any decision on the businesses and employees affected.

PN757

Now, we say that as to the section 36, that is clearly inherent in the emphasis on the economic position of any industry and also the reference to employment. That is the second thing, that both the criteria for the State Commission and for the Fair Pay Commission they both direct attention to the employment effects of any decision and they also both encompass consideration of the effects on the competitiveness of the businesses affected. Now, that would be inherent in having regard to the economic position of any industry that comfortably accommodates the proposition that the Tasmanian Commission, this Full Bench, would have regard to the any effects on the competitiveness of the businesses affected.

PN758

And of course, the Tasmanian minimum wage is also described in section 47(a)(b) as, or, I am sorry, I will just start that again. The Tasmanian minimum wage as provided for in 47(a)(b) is part of a set of what are described in 47AA as a safety net of fair minimum conditions. Well, the parameters for the Fair Pay Commission include, of course, setting a safety net for the low pay. Now, our suggestion is that, with respect, is that these, the respective criteria Commonwealth and State in this instance, and we would, of course, say more generally, but in this specific instance comparing section 36 with section 23 of the Workplace Relations Act 1996 Commonwealth, there is very substantial overlap. There are substantial similarity.

PN759

DEPUTY PRESIDENT SHELLEY: Well, the Fair Pay Commission is going to be very fortunate to have the benefit of the State's deliberations on these matters then?

PN760

MR COLE: Well, it already has the benefit of some States' deliberations but of course we, the burden of our submission is that enough is enough. It doesn't need any further assistance in that regard. But we come back to that point. There is a long-standing history of national consistency. There is only one practical way to promote national consistency and that is the - - -

PN761

PRESIDENT LEARY: But if you accept that there is national consistency. That is if you accept that there is, and is going to be national consistency and that is arguable - - -

PN762

MR COLE: Yes.

PN763

PRESIDENT LEARY: - - - if you hear what the parties are putting.

PN764

MR COLE: Yes, but that argument needs to be viewed, your Honour, against the backdrop of the unanimous acceptance of what have been the benefits of national consistency in the minimum wage fixation and particularly adjustment of minimum wages, for such a long period of time. I mean, it has been a practice that has been supported by all parties and Tribunals.

PN765

PRESIDENT LEARY: Well, one begs the question, if it was so successful why was there a need to change it?

PN766

MR COLE: Well, it, with respect, hasn't necessarily been changed. All that has changed - - -

PN767

PRESIDENT LEARY: Well, it must have changed otherwise we wouldn't be here.

PN768

MR COLE: All that has changed is that there is a new and different Federal body which will make the Federal decision, but the reach of that decision will still be very wide. It will be the decision with the most pervasive effect and, of course, that is what is relevant at the end of the day, the effect of the decision and we say - but there may be other views, but nothing has really changed that warrants now discounting the benefits that have been clearly seen to try in the past of achieving generally consistent outcomes.

PN769

PRESIDENT LEARY: Well, what has changed is that there is a new body setting a wage that we, by statute, do not have to take into account.

PN770

MR COLE: That is true, but of course not all State Commissions have been enjoined by a statute - - -

PN771

PRESIDENT LEARY: That is true. Yes, I agree with you there.

PN772

MR COLE: - - - to take the Federal Commission into account and so I think - I acknowledge that that statutory provision in a number of States has been relevant and the fact that that has been adopted by State legislatures itself attests, from a different perspective, from a legislative perspective, to acceptance at that level of the benefits of consistency. Now, the final thing I want to say about the criterion is really just to briefly respond to what my friend from the TTLC was suggesting was important to take from the recent OECD reports and he put that, as I understood it, on the basis of his interpretation that in some way or other the legislation ties the Fair Pay Commission's hands in some way by assuming and imposing a Fair Pay Commission acceptance of the necessary dimension between the minimum wage adjustments and employment effects.

PN773

Now, the first point I make is, yes, it is an issue. Employment effects on the low paid and the prospects of unemployment people obtaining work is a matter for consideration but the Fair Pay Commission will determine that based on the submissions made to it, the evidence available to it, its own research. It is not directed in some pre-determined manner by the Federal

legislation as to how it views that issue. And the same issue, effects on employment levels, is an issue for consideration by this Full Bench of the Tasmanian Commission. And he second - - -

PN774

PRESIDENT LEARY: I think if my memory serves me, and you were there so you can possibly remember also, a couple of national wage cases, or safety net reviews, whatever they were called at the time, the question was put for some indication from the parties as to the impact of the previous safety net review, unemployment, etcetera, etcetera, and if I recall it, no one has ever been able to come up with any data that shows that there is a significant, or an insignificant impact.

PN775

MR COLE: Well, the Commonwealth did undertake an exercise a couple of years ago, your Honour, which was presented in one of the - - -

PN776

PRESIDENT LEARY: After my time.

PN777

MR COLE: - - - present cases but ultimately I think for a variety of technical reasons the, as it appeared to us, the Commission, the Full Bench, found that it was not particularly assisted or even at all by the exercise. But what your Honour says is, I think, true, but - and, of course, the Fair Pay Commission, the Industrial Relations Commission, for reasons which we nowhere criticise, have felt that this is really sort of - that it was not appropriate for it to commission or conduct its own research but that is now explicitly allowed for and provided for as a role for the Fair Pay Commission.

PN778

But coming to my friend's interpretation of what the OECD is saying, he actually read out from, and he was quoting from a document which is headed Boosting Jobs and Incomes, Policy Lessons from Reassessing the OECD Jobs Strategy. And that document is - complements the OECD Employment Outlook 2006 which is also headed Boosting Jobs and Incomes. These are, these documents complement one another but they are different documents. Now, what my friend read out, however, was the words that included, and I quote:

PN779

Recent analysis confirms that over the high and minimum wages ... (reads)... prospects of vulnerable groups.

PN780

Now, we ask the Commission to bear in mind that Australia already has, and the States as well, because the minimum, the least award wage everywhere as I understand it, is the same as the Federal minimum wage and that Federal minimum wage stands at about 58 per cent medium earnings, which is the highest ratio in the OECD. So, and on top of that, unlike most OECD countries, this will be apparent from appendix A to Commonwealth 1, and they mainly have a single minimum, Australia on top of its Federal minimum

wage and the State equivalents has, of course, a hierarchy of other occupational minimum wages.

PN781

My colleague corrects me. That material about wage-setting in the OECD countries is in appendix B to Commonwealth 1.

PN782

PRESIDENT LEARY: Okay.

PN783

MR COLE: So we - so the question is still very much a live issue, we would say, in Australia. We have the highest minimum wage on that measure. The OECD is confirming that overly-high minimum wages may affect the employment prospects of vulnerable groups. The issue continues to be a critical issue. It is the sort of issue that one may anticipate may well be further ventilated through the work of the Fair Pay Commission. Now, just perhaps finally on, subject to - we would like to hand up a further exhibit that draws together the data in some of the tables in Commonwealth 1.

PN784

PRESIDENT LEARY: I will mark the document Commonwealth 2.

**EXHIBIT #COMMONWEALTH2 DOCUMENT DRAWING
TOGETHER DATA IN SOME TABLES OF COMMONWEALTH1**

PN785

MR COLE: Thank you, your Honour. So the Commission will be aware that in Commonwealth 1 we set out in tables 3.1, 3.2 and 3.3 some statistics based on the ABS employee earnings and hours survey and unpublished data in particular from that survey, and exhibit Commonwealth 2, the scheme of this is to rank the industries according to the number of award-reliant employees in each of these Tasmanian industries. So the retail trade is the industry in Tasmania which has the greatest number of award-reliant employees and it then shows the proportion of award-reliant employees in each of these industries in - are employed in un-incorporated enterprises. That is in the second-last column from the right.

PN786

Now, so what this exhibit helps the Commission identify is where the primary impact of its decision will be felt because its decision will apply, of course, to un-incorporated enterprises in the private sector and in retail trade of all award-reliant employees in retail trade in Tasmania, 37.3 per cent are employed in un-incorporated enterprises. Now, what we don't know, of course, is how that figure is further split between the TICs jurisdiction and the AYR Services jurisdiction.

PN787

PRESIDENT LEARY: Yes.

PN788

MR COLE: Now - but there is some benefit in ranking the industries in accordance with the number of award-reliant employees and then considering just how - where the impact will be felt and what this actually allows also is for you to get a feel for what the potential impact of the determination of the Fair Pay Commission in due course will be and how that may compare with the impact of the - is present for the bench.

PN789

Now, just - so the few points we would make by reference to this table and to the other tables in the body of Commonwealth 1, that, firstly, it may be observed that just over half of award-reliant employees in Tasmania are employed in un-incorporated businesses, that is the 19.4 thousand. Now, when one analyses this table closely it will be seen that in seven industries the Fair Pay Commission's determination will directly affect the majority of award-reliant employees and they will be in the range of 52.6 to 88.6 per cent.

PN790

So in seven of the industries Fair Pay Commission's determination will dominate. But on these figures we say an important conclusion to be drawn is that the determination of the Fair Pay Commission and the determination of the Tasmanian Industrial Commission in a number of industries they will each cover a significant number of employees in the same industry and, in other words, it is a question of it being overwhelmingly one thing or the other, overwhelmingly Fair Pay Commission coverage of an industry, I am talking about the award-reliant employees in an industry, or overwhelmingly coverage by the Tasmanian Industrial Commission.

PN791

Now, there are some instances of that, but that is not the main pattern and it is not the overall picture and on that basis we say it can't be contended that the lack of consistency, if that is an ultimate outcome, would only be likely to lead to problems in rare circumstances in an industry in Tasmania. Now, and we put that in terms of the competitive position of businesses in the same industry competing with one another in Tasmania. If it were the case that an industry as to award-reliant employees was predominantly covered by one jurisdiction or the other, well, that would mean that businesses would not be competing, or that the competing businesses would not be in different jurisdictions. But we say there is a quite considerable interest of competing businesses in the same industry in Tasmania as to award-reliant employees, in fact, falling into the different - the two respective jurisdictions.

PN792

That is all I want to say about that exhibit and my friend at one stage, from the TTLC, somehow attributes to us that we are assuming in our submissions that the Fair Pay Commission will determine a lower adjustment. I need to emphasise we are not making any assumption at all as to what the level of the adjustment determined by the Fair Pay Commission will be, nor how that would relate to any earlier fixation if one is made by the Tasmanian Commission.

PN793

My friend suggested that the Commonwealth's credibility in continuing to advocate the merits of maintaining a consistency approach is somehow undermined by the fact which we acknowledge, that is that we did not continue in the proceedings in New South Wales. Now, I am going to make it clear that a key reason we did not continue in the proceedings in New South Wales is that the Commission made it clear that it had already effectively determined the application that the Commonwealth was wishing to continue to press.

PN794

In New South Wales, as we have done in Tasmania, we made an initial application to requesting the State Commission to adjourn the hearing of the case. Now, we wish to continue in New South Wales and in the same way as we are continuing here to advocate an alternative position which is that the respective Tribunal should take account of the Fair Pay Commission determination in deciding the application before it. But it emerged from the situation - in the situation in New South Wales that the New South Wales Commission had effective - considered, or it appeared to the Commonwealth that the New South Wales Commission had already determined the alternative position.

PN795

So in the circumstances that was the key reason the Commonwealth did not continue in that case and in my submission, it in no way undermines our credibility in continuing to press this matter here and, of course, we have put the same view to the Queensland Industrial Relations Commission and that Commission has not finally ruled on the Commonwealth submission. So if the Commission pleases, we appreciate the opportunity this morning to address those issues in our written submission and the other matters to which I have referred, and that completes the Commonwealth submissions, unless there are any questions.

PN796

PRESIDENT LEARY: No. Thank you, Mr Cole. Thank you. Did you want five minutes, Mr Tullgren, or are you ready to proceed?

PN797

MR TULLGREN: No, I am happy to proceed.

PN798

PRESIDENT LEARY: Fine.

PN799

MR TULLGREN: Your Honour, turning to some of the points that have been put by the other parties. Commencing with, first, my friend, Mr Baker's submission, he says that the proposal put by the Tasmanian minister is to provide the increase in the minimum wage in that the issue of relativities is something that should be left to another occasion. Our response is that the question of relativities may well be something that can easily be undertaken but what we seek is to arrest a compression in the relativities so that when and if such a matter comes before the Commission there will have been effectively

a line drawn about that compression and allow, if there is going to be some consideration of it being done on the basis, that there is no further compression of those relativities. Now, the minister says that his intention is to link wages originally being with inflation. That is a non-economic proposition. We say that if there is, unlike our submission, no basis that underpins that intention of the minister, and that must go to questions of the Commission's ability to accept the argument about the figures that he has produced when it is short, with respect, on much detail how that figure is arrived at compared to quite exhaustive calculations that we have provided.

PN800

Turning to Mr Watson. We note that he says that he says that the position that he puts is based on a survey of members in certain industries. But we know that the surveys are helpful but it is interesting that the basis upon which a wage claim is put to you is - asserts a survey of what people thought is a good idea. I invite the Commission to pause for a moment to believe that if those that instruct me had conducted a similar survey on the employees that it may not be 4 per cent, it might be 44 per cent that we are coming to which makes a sort of back and good basis for an argument they say, well, we - and it is a bit like a Bert's Family Feud, you know, we interviewed a hundred people and asked them what sort of wage increase they would like and then you have to guess, or you make a judgment on that one.

PN801

Now, with respect to my friend, I understand the position he is in but it is not really, I mean, he too, has got about as much empathy as the learned Tasmanian minister saying: I believe the \$20 is a rattling good idea. They are both short on any firm foundation. My friend, Mr Watson says that the South Australian decision perhaps is - was helpful to his cause in that it provided for a different amount to New South Wales and Western Australia, well, to the extent that it provides a different amount that might be helpful.

PN802

It has to be borne in mind that the Full Bench of South Australia said - found that, in part, that their decision was founded on the fact that the South Australian economy had lower economic growth than other States. Now, the fact is this, as my friend evinced - concedes at least, that in all of the material, that the Tasmanian economy compared to other States is not in the same position as South Australia. So to the degree that reliance can be placed on the argument in the South Australian Commission, with due respect to their Honours in South Australia, they had observed that there are some different factors that were exercising their mind.

PN803

My friend also says that the safety net should be used to underpin bargaining and that for that reason the safety net should not equate to the average outcome provided to the enterprise bargaining. But with respect, that argument is disingenuous because my friend knows that the people we are talking about are not people that have any ability to bargain. There is no information before you to indicate that they are in the position to bargain.

PN804

We are talking about the lowest paid in society and as we have put to you that the incentive to bargain might be driving them into starvation so that they don't feel motivated. There is no basis, we say with respect, to support any proposition that says, well, the safety net has got to be lower because it provides a basis for bargaining. We note that while my friend doesn't specifically address any of this in their detailed submission, but again, the issue that we have in ours, and also that in the three States that have decided this that have similar applications, there has been discussion about this and I draw your attention, without going directly, inquire into it that at least in New South Wales and Western Australia they didn't - the Full Benches there didn't accept the proposition that we are talking about people who are in a position to bargain and that, in fact, an increase in the wages would be an additional incentive to bargain.

PN805

Bargaining with all - with all its faults, has been a factor in the Industrial Relations environment for many years. If these people who are to be subject to this application were in a position to bargain then I would have thought that my friend's clients would have been busily bargaining in relation to these matters. The fact is that there is no position there. My friend defends the survey by reading the publicity of those that developed the survey and are confused about their own survey. Well, what we would say is, it is not usual for someone who produces a survey to say: this is the crappiest survey around and you can't believe in it. You have always got to elevate the proposition, with respect, I am not saying it is the crappiest survey around - - -

PN806

PRESIDENT LEARY: I am glad you have clarified that.

PN807

MR TULLGREN: - - - what I am saying is, simply by reading the press release which merely says that weird and wonderful ain't no basis for coming along. And the census survey which we have referred is a land of sand and it shows that the result is markedly different. But even if you were to exclude that, even as we have shown on their analysis of the Commonwealth Bank survey, the split is fifty/fifty about the sky is going to fall in, or it is not, so that you can discount the relevance of this wonderfully structured and presented survey on the basis that it doesn't provide a strong foundation for the argument.

PN808

We note the information on productivity rates. There is no dispute that productivity rates may not be as high as they could be in Tasmania but the graph shows they are increasing and that the indications are that that will continue. There is, again, nothing in the - there is no evidence in my friend's submission which goes to point out that the increase, the grant in increase that we see will decrease or affect productivity rates at all.

PN809

My friend says that the cost of the increase will be 4 per cent. Well, that is a submission; there is no evidence about this. In relation to the question of a

relevant date we don't disagree that would be on 1 August which is the case. Now, turning to my friend Mr Cole's submission, the first thing we would say is that he referred to appendix B which sets out material about how the wages are set, and leaving aside perhaps my other interests in the relevant and specific matters in staying the set wages, the thing to be made about all of these is that while they are interesting they are all selected from countries that have vastly different industrial relations systems. The setting of minimum wages is but one factor and that simply extracting them and saying, "Oh, well, Australia is different. Everyone else does it, fine, there is some discussion", I mean, presumably we note that my friend, the Commonwealth minister, doesn't suggest we adopt the German system of collectivised State bargaining which has arrangements, or the system that applies in the Netherlands, so that producing this information and saying, "Well, minimum wage setting is done differently and using the Fair Pay Commission is not revolutionary." Again, this fails to address how the fixation of minimum wages sits in the Industrial Relations and the economic and social pacts that exist within their particular countries.

PN810

We note that the Commonwealth maintains that it puts no position on the merits of the claim. We say that when the Commonwealth granted the right to appear my regard to the State Court was that they have some substantial involvement in the national economy but nowhere does my friend make any submissions to you about how the national economy is travelling, how particular wage claims might affect the national economy, and bearing in mind that my friend's client has far more resources open to it than anyone else at the table and is in a position, for instance, to provide some assessment on, and an assessment of our claim, or be in a position to meet the Tasmanian minister, or my friend Mr Watson but - and clearly, it is not acceptable, we say, for the Commonwealth Government to say: well, we have passed no position on the merits about any of this but we just want you not to do anything about it for the moment.

PN811

And, equally, my friend says that his client hasn't decided if it is going to make a submission to the Fair Pay Commission. Well, here is one of the biggest players running around and saying: well, we are not going to tell you what we think. And, equally, we may not make any decision with the Fair Pay Commission on the decision which we have a vital interest in. Bearing in mind that less than 48 hours ago the Federal Treasurer suggested that the Commonwealth should take over control of all economic policy that they have won - so there seems to be some contradiction in the Treasurer saying that but then his own Government saying: look, we are not sure we are going to say anything about any of these matters to anybody. It just beggars belief.

PN812

The question about the wage freeze, we say that simply saying that the APC can take that into account can mean that they do and that that gap is not made up. Effectively, the decision - amendments to the law did create a wage freeze. The position in relation to the retrospectivity and so on, well, the Commission has to make the decision annually, and I will come to that, but my

friend doesn't advance the proposition that we will, in fact, then support them, there being some retrospectivity. I notice - I draw attention that, that Mr Watson in his submission clearly was intoning against retrospectivity because of the interest of his clients and so the date on which it was being done.

PN813

And that is correct. I mean, retrospectivity, or holding out the possibility that, oh, you could make a retrospective decision, is really the straw person, straw man to pull up. Now, coming to this address, this discussion, the submission is about the minimum wage and there being two minimum wages in effect, is the one of the section 35 and the one of the section 47.

PN814

In strict technical terms there might be an argument that that has to be, but the practical reality is that we are talking about a minimum wage. This Commission has set a minimum a wage over a number of years. It is contained in the State wage-fixing principles, been provided from time to time. The vast majority of clients equally would reflect what the minimum wage is. To possibly suggest that there are two minimum wages that can be different and that, therefore, sending one if you wait 12 months to know whether if you agreed on next year means that you would still be exercising your functions under both parts of the Act, we submit really is a nonsense.

PN815

There is a minimum wage. There is an intention to be a minimum wage,

PN816

not to be multiple minimum wages. The concept of a minimum wage whether it is a minimum wage that is payable to all adults regardless of the work they perform, or a minimum weekly wage for adult full-time employees, was ground number 47AB. They are effectively the same as the - and it cannot seriously be argued, we respectfully submit, that parliament intended that it was going to create two minimum wages, that could be applied differently.

PN817

In relation to this question of annually, we addressed this at some length in the adjournment submission, so it wasn't my friend, Mr Cole, his client didn't address this although it should have. We say that it is clear that this Commission has had a responsibility for fixing wages and those decisions have been operative from 1 August each year and that the Commission - that would be the appropriate date, and the Commission should exercise the discretion to simply do that, because if the Commission were to accept - I think my friend made a suggestion at one stage, not necessarily about this but in relation to something else, that those who instruct me were attempting to beguile the Commission into believing their proposition and with the greatest respect I suggest that this argument about annually possibly being February next year is an attempt to beguile the Commission into putting this matter off.

PN818

Parliament had, and would have known that this Commission makes decisions that apply from 1 August each year and that that would have been in its mind and can rightly be believed to be in its mind when it simply ruled on the provision. The argument that the new minimum wage, that is, with the

section 47 minimum wage, has a different role outside of awards, we say that on a theory of the Act that can't be the case. Section 47 requires the minimum weekly wage for an adult full-time employee is the Tasmanian minimum wage as defined annually by the Commission under section 35(2)(a). Section 35(1)(b) provides for the making of a provision for a minimum wage that is to be paid to adults without regard to any of the work reform. There is, effectively, no difference.

PN819

And to argue that there are - is effectively to enter into those entertaining that at the end of the day the Commissioner's medieval theological discussions about how many angels advance on the heavenly kingdom and that while it is interesting to believe no doubt assists the proposition. Mr Cole then refers to the public interest provisions under section 36, and it is clear that in deciding - in the exercise of the public interest the Commission must look at the economic position of the industry likely to be affected by the new award and to consider the economy of Tasmania and the likely effect of the proposed award and to take into account any other matter.

PN820

Now, the Commission has got before it substantially economic data put in by both ourselves, the Tasmanian minister and my friend, Mr Watson, which go to, clearly, the economy of Tasmania and also address the economic position of the industry. Now, if we accept for a minute that there can be an argument that different industries can suffer different economic effects then there is nothing put to you to show that any industry will be in a worse, or different economic position by the granting of this increase, is it clearly open to any party, including my friend, Mr Cole, to argue and to put material before you that says that it is to occur.

PN821

Note that my friend, Mr Watson, makes a joint submission on behalf of the organisations including the Mines and Metals Association and the Farmers' and Graziers' and the retailers. None of those put argument to you through Mr Watson's submission that their economic position of their industry is likely to be effective in any adverse manner, effective in being able to control his client, so that the Commission has before it a wave of economic material which shows that the economic - that the economic position in the economy is good and there is going to be - that no industry is going to have its economic position adversely affected.

PN822

So that the Commission is clearly, in exercising its jurisdiction based on the material before it today, dealing with those matters. The third one is to take into account another matter considered by the Commission to be relevant. In this case what Mr Cole puts to you is effectively: well, what we want you to do is to consider what is relevant to the public interest is a speculative proposition of about what some other body might do in the future, a body which you are not required to have any legislative responsibility for taking into account. But that you should take all of the economic data that is before you

and you should simply set that aside and say: well, look, we have got all of that, but on the public interest we will wait.

PN823

Now, that really is stretching the public interest consideration. And we say that if the parliament of Tasmania had wanted this Commission to have - take an account of, in whatever form that deliberations from the Fair Pay Commission the parliament would have amended the law to actually say that, that the parliament hasn't done that quite specifically. So that the public interest is not suited by simply adjourning, well not, or failing to deal with the application before you. And bearing in mind that the application which is made under section 35 is to vary minimum rates in awards, and that that matter simply can't be put off because there is a live application to do that.

PN824

My friend, Mr Cole, refers to the decision in South Australia and I put to you paragraph 90 of that decision where the Commission said that on balance it had decided to proceed. But at paragraph 90, the Full Bench didn't re-hash all the arguments about seeking an adjournment. But what they said is:

PN825

Without canvassing all the relevant considerations ...(reads)... the other considerations outweigh that factor.

PN826

Now, with respect, we say the same is the case here and that, therefore, the South Australian decision is of no assistance to you. Now, there was then some argument put to you by my friend, Mr Cole, about the Fair Pay Commission. Now, if you go to paragraph 211 of Commonwealth 1 you will see what is helpfully being produced is section 43 of the Industrial Relations Act and it sets out in descending order of those factors that the Fair Pay Commission must take into account. And the first one is the capacity for the unemployed and the low paid to obtain and remain in employment; the second is the economic employment of competitiveness across the economy; and the third is providing a safety net for the low paid. Young people, and those with disabilities run a poor fourth in the order.

PN827

It is clear that the principal objective of the Fair Pay Commission is to determine wages to get people off the unemployment line and that, effectively, we say, will do to lower minimum wages. Now, you are not charged with having to deal with the capacity of the unemployed, or the low paid, to obtain and remain in employment. You have to take into account the economy of Tasmania. And the evidence before you shows that this is the increase that we seek will not have any adverse effect on employment in Tasmania.

PN828

It also, as, we say, our submission shows the employment and competitiveness will not be disadvantaged. So that the Fair Pay Commission's principal objective is effectively a modification of the 18th century concept of all Commissioners in relation to the core of the unemployed. Now, in relation to the question of national consistency, there is no doubt that there has been, for a

long time, national consistency and that has been borne of a consensus about how the Industrial Relations systems should operate.

PN829

And in part, in some States, as Mr Cole concedes and so do I, that that consensus has been reflected by the fact, as it is in the Tasmanian legislation that the State Commissions where that has occurred should take account of in elements of any decision of the Federal Commission. So that clearly shows the basic consensus. That consensus has been totally sundered by the actions of the Federal Government. It is not the States that have amended their laws to go off on some ideological frolic about Industrial Relations, it is the Commonwealth which has radically restructured the Industrial Relations system, that has, which includes - removing the powers of the Commission to set wages on the basis, if you believe it, that it is too adversarial. That is, that in a public forum like this the parties have actually got to defend what they say is an imposition and that what we do is, we take it out of that - and we have five people to sit round in a room and make a decision that they are not answerable, they just - and they don't - the parties making the decision simply don't have to justify what they say, there is no rigour to the proposition; it is just that they have to decide. Now, it is that which has been visited on the States, not the other way around. And to simply say, as his argument: well, we, as the Commonwealth, have changed the law and on the basis that we used to have national consistency we want you as the State simply to follow on and vote, and that clearly isn't the case.

PN830

And it is equally borne in mind that as a result of the South Australian decision yesterday that if there was an argument up till yesterday about 4 o'clock, there was some for of consistency and urging in relation to decisions in the State wage case, well, that disappeared with the South Australia decision. So, again, my friend, Mr Cole, doesn't put to you saying, in light of two \$20 and one mixed grill, how you, holding off, is going to assist in the consistency.

PN831

And I would have thought that if you are going to argue to why you shouldn't do something it would be appropriate to actually put to you why you should do it and what benefit it is going to have in relation to this. And I note that Mr Cole addresses the submissions we made about what went on in New South Wales and I know what he said, and what Mr Cole doesn't tell you is that the New South Wales Commission, apart from expressing some concern at these repeated quixotic applications to adjourn, also made it clear that it wanted to hear argument about issues about the economy and it was at that point that the Commonwealth decamped because where Mr Cole - the logic of Mr Cole's argument comes undone is that all of the New South Wales employers continued to press for the adjournment in seeing the Full Bench decision and I have taken you to parts of it, where they all, on cue as a Greek chorus stood there and said, "You shall adjourn these proceedings to wait for the AFPC."

PN832

Now, when the Full Bench made it clear that it didn't like that, the employers first in New South Wales didn't bolt out the door and issue a press release

about it. And, bearing in mind that it is, in fact, the Commonwealth had decided, well, you are - the State Commission: you are against us and we will leave, the fact that the minister put out some petulant press release which basically, to use the common vernacular, "slagged off" the New South Wales Commission, and when the Solicitor-General, having to fly from cold Canberra to fragrant Sydney to argue why his client shouldn't be decidedly content has got anything to do with the fact that the Commonwealth just decided that they weren't going to get anywhere in relation to the adjournment, but it went further than that and that goes to the approach, the real approach, we say, of the Commonwealth to these matters. And so that it is not all - it is not as benign as was put to you.

PN833

In relation to the OECD report, that is putting the counter - the arguments principally put by my friend, Mr Watson, and his reliance on the aptly-named Mr Tulip, to argue that increases in the minimum wage cause hordes of unemployment, the Charring marches were big all over Europe, it was to show that that wasn't the case, and that also to reinforce what we have said the Federal Commission has done and your Honour rightly identified Mr Cole has said the difficulties with concern in the study that the Commonwealth did, that there is no definitive evidence increases in the minimum wage cause unemployment.

PN834

And what it is, and the OECD put this, apart from perhaps Mr Watson's client's sweeping allegations that the percentage increase sought by the union is over the top, there is no evidence that the claim in any way runs counter to, or will offend the quite conservative economic body that is supplied by the OECD. But what is interesting is that Mr Cole hints at, that, oh, well, if it is 54 or 58 per cent it is too high, and that has got to be taken into account.

PN835

Well, again, if that is to be, or was to be a legitimate argument put to this Commission then my friend, Mr Cole was in a position to lead evidence and put submissions to you about that. But he throws it, and bearing in mind none of this was contained in their submission. There was no notice about it in his - but that he hints at this proposition: well, the minimum wage in Australia is much higher than in these countries, and that is something you have got to take into account.

PN836

Well, you simply can't make those sort of mutterings and leave it at that. Either there is a genuine argument being put by the Commonwealth to say, well, you shouldn't deal with this matter, or that it is too high and you should bear this in mind and not increase it. The Commonwealth was in a position to raise these arguments and it didn't. It is not appropriate to simply make those sorts of throw-away lines from - at this table at this stage.

PN837

In relation to the questions of split coverage which is reflected in the second exhibit of the Commonwealth, well, that is the case, but also for instance, in the number of States based on the difference between State and Federal awards

there has always been the difference and from time to time there have been divergences in decisions made by State Industrial Tribunals, in particular circumstances about the State - the wages that apply in that Stage.

PN838

This Commission has done it on a couple of occasions, it has been done in New South Wales on at least two occasions in the period of the last 20 years. So those divergences are there, however, they are a fact of life and they were always a fact of life but - - -

PN839

PRESIDENT LEARY: It could be worse though, well, "worse" is not the right word. It could be more likely that there will be two separate rates applying?

PN840

MR TULLGREN: That is - - -

PN841

PRESIDENT LEARY: Possibly in most States - - -

PN842

MR TULLGREN: That is true.

PN843

PRESIDENT LEARY: - - - depending on what happens.

PN844

MR TULLGREN: That is true, but it is of the Commonwealth's making, not of your making, not of ours, not of Mr Watson's making. It is the Commonwealth's decision, and the Commonwealth says that, you know, we should have - we have had national consistency and we should have national consistency. Well, I can indicate that some of those who instruct me would say that there is a simple answer to having national consistency, that is the way John Howard had the power. Now, I am not sure that that advances the argument?

PN845

PRESIDENT LEARY: I think that is outside our jurisdiction.

PN846

MR TULLGREN: But, look, that is clearly not something that is within the jurisdiction of this Commission but it has got about as much legs as running around and saying, oh, well, you should simply wait because we have changed things. We are all now the victims of the decision of the Commonwealth to change the rules. That is to be regretted. It is not something that those who instruct me wanted but we have to live with what we have got and we have to live with what the Parliament of Tasmania says the responsibility is with the Commission.

PN847

PRESIDENT LEARY: But it could create some problems on the ground, so to speak, could it not?

PN848

MR TULLGREN: Look, I - - -

PN849

PRESIDENT LEARY: Which we all have to be aware of.

PN850

MR TULLGREN: Yes, I don't think anyone could deny that and while they are unfortunate, they are not matters that have been accepted by any of the three Commissions as a reason to adjourn the proceedings and we say that they are matters that, depending upon how long the current Federal system survives, may be issues that have to be addressed at some time in the future. But it is not appropriate to start gazing into the entrails of a couple of chickens and try to divine what that is going to be in a year or two's time.

PN851

So, your Honour, we say that there is nothing that has been put to you by the Commonwealth that provides a plausible reason for not proceeding to make a decision. And we also say that, with respect, there is nothing that has been put by the Tasmanian minister, nor by my friend, Mr Watson, that would justify the granting the claims that they support. There is only one detailed economic analysis and argument supporting with great precision the calculation of the claim and that is Unions Tasmania and for that reason, as well as the others we have advanced, we say that the Commission should grant the increase sought by Unions Tasmania.

PN852

PRESIDENT LEARY: I congratulate you on your estimate of timing.

PN853

MR TULLGREN: It is pretty good, yes.

PN854

PRESIDENT LEARY: Mr Cole?

PN855

MR COLE: If the Commission pleases, we are not overly sensitive but there are three respects which we have, in our submission, been misrepresented by and it will take me about 30 seconds to explain what they are if I can claim that indulgence?

PN856

PRESIDENT LEARY: All right, the clock is ticking.

PN857

MR COLE: Just in terms of our position in relation to the Fair Pay Commission, the burden of our submission is that because the Commonwealth has not yet made a submission we can't anticipate, or pre-empt what the Commonwealth's position may be. You shouldn't read any more or less into the situation than that. Secondly, my friend referred in two - Commonwealth's 1 at paragraph 2.11, that is where we set out section 20 - the provisions of section 23 and he said that we had listed the factors in decreasing order of

important, or significance; I am not sure which word, but he said "decreasing order".

PN858

We have listed them, with respect, in the order in which they appear in the Act and, in my submission, no inference can be drawn from the sequence with which those matters are listed in the Act as to any perceived order of importance as far as respective issues. And, finally, my friend alluded to a media release by our minister and he characterised it. A minister's representative has characterised that in the proceedings, to which my friend referred, not in my friend's words but as "robust criticism". The Commission pleases.

PN859

PRESIDENT LEARY: All right, thank you for that. Thank you one and all for your submissions, we will reserve a decision. Thank you.

ADJOURNED INDEFINITELY

[12.58pm]

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