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TRANSCRIPT OF PROCEEDINGS

O/N 57120

TASMANIAN INDUSTRIAL COMMISSION

**PRESIDENT P.L. LEARY
DEPUTY PRESIDENT P.C. SHELLEY
COMMISSIONER T.J. ABEY**

T No 12940 of 2007

ALL PRIVATE SECTOR AWARDS

Application pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 by the Tasmanian 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 2007 by the amount of 4 per cent or such higher figure as may be indicated by the Labour Price Index for the year ending March 2007; (ii) to increase the minimum wage that is payable to adults without regard to the work performed to \$523.95 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

9.40 AM, THURSDAY, 21 JUNE 2007

HEARING COMMENCED

[9.40am]

PN1

MR S. COCKER: If the Commission pleases, Simon Cocker for the Tasmanian Trades and Labour Council, and with me, MR T. JACOBSON and MR T. LYNCH.

PN2

MR N. BUCHANAN: May it please the Commission, Neil Buchanan. I appear for the Tasmanian Chamber of Commerce and Industry. And President, I actually have a letter of authorisation - of authority from the CEO, Mr Thomas, to that effect.

PN3

PRESIDENT LEARY: All right. Thank you very much. If you could pass that up?

PN4

MR BUCHANAN: Thanks.

PN5

MR J. EVANS: If the Commission pleases, Evans, J. I appear on behalf of the Minister for Workplace Relations, pursuant to section 27 of the Industrial Relations Act.

PN6

PRESIDENT LEARY: Thank you.

PN7

MR P. BAKER: President and Members of the Bench, I appear of the Minister administering the State Service Act 2000, P. Baker.

PN8

PRESIDENT LEARY: Thank you. Could I just inform you that we have had correspondence from PET, Primary Employers Tasmania, advising that they are unable to attend. Keith Rice is the chief executive, I think it was under another name, authorising the TCCI to appear on their behalf. Are you aware of that?

PN9

MR BUCHANAN: Yes, I am, thanks, President. He did ring me. He did foreshadow that the weather might be a problem coming down, I think.

PN10

PRESIDENT LEARY: Good. Also earlier we had a letter from Mines and Metals, Australian Mines and Metals Association, advising that none of their members are covered by the State legislation, so they won't be appearing or making any submissions. Mr Cocker?

PN11

MR COCKER: If it please the Commission. On 2 May, the Trades and Labour Council made an application to hearing as read out. With the leave of the Commission, and as flagged in correspondence earlier in the week, I would

seek leave to vary that application, having had the benefit now of the national accounts to the end of March, which weren't available at the time of the original application.

PN12

So I would seek leave to amend our application to read, "Increase all award rates and existing allowances relating to work or conditions in private sector awards of the Tasmanian Industrial Commission, for a common operative date on or at the beginning of the first full pay period to commence on or after 1 August 2007 by the amount of 4.5 per cent; to increase the minimum wage that is payable to adults without regard to the work performed to \$527.10 per week; to obtain an increase in the rate of meal allowance in all related awards and to the extent necessary to effect these changes, amend the principles of the Commission." I understand my colleague, Mr Baker, also wishes to address the question of the principles of the Commission.

PN13

PRESIDENT LEARY: All right. Just in respect to the amendment, I think we forwarded a copy of the letter that you provided us with to all of the other parties in respect to that. Is there any objection to the application being amended?

PN14

MR BUCHANAN: No objection at all, thanks.

PN15

PRESIDENT LEARY: All right. The application will be amended as set out in the letter from Unions Tasmania dated 19 June 2007, and I will mark that as an exhibit, and I will mark that exhibit A1.

EXHIBIT #A1 AMENDED APPLICATION AS SET OUT IN LETTER FROM UNIONS TASMANIA

PN16

MR COCKER: Thank you, President.

PN17

PRESIDENT LEARY: Thank you.

PN18

MR COCKER: It also - then it is noted that our application meets the requirement of section 35(10)(a) of the Industrial Relations Act 1984 to hold an annual hearing to determine the Tasmanian minimum wage. It is our application that that minimum wage should be set at \$527.10, and it is our further application that the timing of the rise should be so that it takes effect first pay after August this year. It is also our application that this pay hearing deal with the general move as to wage rates and wage-related allowances in the private sector awards of the Tasmanian Industrial Commission.

PN19

It is our application that those rates be increased by four-and-a-half per cent. It is our application that all relevant meal allowances be increased to \$14.10 per occasion of payment. It is our submission that the indicators for both the Australian economy and the Tasmanian economy show that both economies remain strong, and that all forecasts indicate that this will continue.

PN20

It is our submission that the rises applied for are a reasonable and moderate outcome, that they are required to maintain both the real and relative positions of the award and minimum wage-related workers in Tasmania, and in buoyant economic times there should be no discounting of wages from this objective. To have a look at the economic environment that we are enjoying at the moment, in its decision T12395 of 27 July last year, the Commission said at paragraph 52 that:

PN21

There are no specific requirements prescribed in the Tasmanian Act which we must consider when determining a claim for an increase to the minimum wage. Nonetheless, we think it appropriate that we have regard to the public interest considerations as prescribed at section 32 of the Act, to: (1) consider the economic position of any industry likely to be affected by the proposed award and/or the proposed agreement; (2) to consider the economy of Tasmania and the likely effect of the proposed award or proposed agreement on the economy of Tasmania, with particular reference to the level of employment; and thirdly, to take into account any other matter considered by the Commission to be relevant to the public interest.

PN22

I would set out to address those three issues. To take the second of those first, that is the position of the economy of Tasmania, I would submit that it is necessary to take into account the economic conditions prevailing nationally as well as in Tasmania, given the significant influence that national conditions have on the Tasmanian economy. There are a number of commonly accepted measures that are used to measure the status of the economy. I will quickly run through those. In the Australian economy, the gross domestic product grew by 1.1 per cent in the March quarter, to end up being three-and-a-half per cent for the year, well up on the previous year's figures.

PN23

The current economic expansion of the Australian economy is now in its 16th year, with a total of 62 consecutive quarters of positive growth. The last recorded negative quarter was in September 1991. The Tasmanian equivalent, the gross State product, was reported by the ABS State accounts for the March quarter 2007 to have increased .3 percentage points, to be down slightly on the previous year's record high. But within that, we saw significant growth in exports in the March quarter, with a nearly 25 per cent increase over the previous 12 months.

PN24

In the question of demand, the demand factors in the economy, we saw private final demand growing again in the December quarter for 1.3 per cent and 3.7 per cent for the year. The most recent data for the December quarter revealed that the private consumption expenditure grew by .8 and three-and-a-half per cent for the year. This was supported by strong growth in private capital expenditure, which grew by 1.3 per cent and 2 per cent for the year, or to be 2 per cent higher at the same in the previous year, I should say.

PN25

In Tasmania, the State final domestic demand is the equivalent measure, and for the year ended March 2007 the State private final demand, as measured by the ABS accounts, eased slightly by 1.6 per cent, with private consumption having a net growth of 3 per cent. But it was not supported by the fixed private capital investment, and that came off the previous record highs, despite an increase in the March quarter of 1.7 per cent.

PN26

The private expenditure - investment expenditure in the national accounts indicate that there has been continued growth over the past year, growth of 1.7 for the December quarter and that is again 2.1 per cent higher for the year. The other components of investment were all considered to be increased: non-dwelling construction up 5.6 per cent for the quarter and 10 per cent for the year; new engineering construction up 9.6 per cent and 12.7 for the year.

PN27

And to sum up the investment situation, take a quote from the finance minister, Senator Minchin, who described investment at very high levels:

PN28

Private business investment has been at very high levels in recent years, but still grew a further 2.1 per cent in 2006. Engineering construction rose 9.6 per cent, just in the December quarter.

PN29

To turn to wages, if it please the Commission, I have a series of graphs which - and tables which I refer to during my submission. I might hand them forward as one set.

PRESIDENT LEARY: Thank you. We will mark that as A2.

EXHIBIT #A2 SERIES OF GRAPHS AND TABLES

MR COCKER: The question of profits: the profit share of the economy, we are seeing a massive increase. Gross operating profits for the March quarter showed a 17 per cent increase over the same quarter last year. For unincorporated business, that increase was 19.7 per cent. For the quarter-to-quarter comparison, and a 9.7 per cent rise for the year, compared to the previous year.

PN30

The point I guess I would make, looking at the two graphs, figures 1 and 2, which is looking at the share of profits and how they are distributed, the first graph shows quite clearly that the share of this profit which is going to the workers has declined significantly from 56 per cent to just on 53 per cent. That is despite the fact that profit share is at record levels. And we have also seen the profit share of basically - of the corporations rising from 22 per cent of total income to 28 per cent. There has been a significant shift in the share of profit that has been enjoyed by those who create it to those who own it.

PN31

PRESIDENT LEARY: Sorry, where did those details come from? It is ABS data, is it?

PN32

MR COCKER: These graphs are from the ABS report, ABS category number 5206.0, March 2007.

PN33

PRESIDENT LEARY: Okay, thanks.

PN34

MR COCKER: To have a look at prices and the consumer price index, we note that nationally the CPI rose by .1 per cent during the March quarter to be 2.1 per cent over the year, ABS category 6401 CPI data. For Hobart, the CPI rose by .45 per cent for the March quarter, to also be 2.1 per cent higher for the year. However, it should be noted that within that figure, there are a variety of outcomes, particularly for the staples of food, which the CPI figure was 4.7 per cent and for housing, which was nearly 3 per cent, significantly above the standard number.

PN35

In the labour market, we have seen further solid growth in the labour market. The graphs on page 2 of the attachment graphically describe how employment has risen past the 10 million mark in Australia this year, or continued to go past the 10 million mark I should say. The total employment in the Australian labour market now of 10,432,200; that is at May. Unemployment has fallen to 4.3 per cent, and the participation rate in the Australian economy has risen to 64.9 per cent. So we have got employment up - going up, unemployment going down.

PN36

Also, it is good to note that the strength in the labour market has been dominated by growth in full-time jobs in the last 12 months, with 80 per cent of all new jobs being full time, and that the national unemployment rate has been on a downward trend since 1993, which is a 30-year low. For Tasmania, in May 2007 there were 226,400 people employed, an increase of 1700 persons over the 12 months from May 2006. Interestingly, the participation rate in Tasmania has actually fallen over that 12-month period. We have seen more men entering the workforce, but a significant decline in the participation of women in the workforce. The participation rate has fallen from nearly 55 per cent to nearly 52 per cent over the 12 months. I am unable to shed any

light on what has made the workforce unattractive to women, but nonetheless it is a strange outcome in buoyant economic times.

PN37

PRESIDENT LEARY: It might make an interesting study for someone who has lots of time on their hands.

PN38

MR COCKER: Well, indeed. I think we have probably got a list of about 10 hypotheses, but nobody is quite sure about which one to - or if any or all, but it is obviously a concern in an aging economy if our participation is dropping off. The unemployment rate in Tasmania, as a result of increasing employment and decreasing participation, has fallen to 4.8 per cent, or 4.4 per cent, seasonally adjusted. The other key issues, particularly in the external sector: the current account deficit remains high, but in terms of percentage of GDP it has actually decreased from 7.1 per cent three years ago to 6.3 per cent in December 2006.

PN39

And over the past year, Australia's terms of trade have again significantly improved. They increased by 2 per cent in the December quarter, and a staggering 13 per cent high at the same time last year. And they rose another 1.7 per cent in the March quarter. This index is at its best since September 1959, which means that relative to imports, our export prices are increasing faster, or in other words, we should be getting wealthier. In terms of looking forward, the national economic outlook, I refer to the Commonwealth Mid-Year Economic and Fiscal Outlook, the MYEFO, for 2006/7, released by the treasury on 9 December 2006.

PN40

This document provides the treasury's economic forecast for the State and the national economies, the most authoritative official outlook available for Australia. The official outlook continues to paint a positive picture of the Australian economy over the near future. Growth in the non-farm sector of the economy is expected to remain solid, at around about 3 per cent during 2006/7. Farm growth has been affected by drought, but there may be some signs that that is coming to an end, and that normal patterns of behaviour might be returning.

PN41

On table 1 on page 3 is a summary of the treasury's key domestic forecasts for the year. And without going to each one individually, I think it is pretty clear to see that they are expecting that the patterns of growth and the increases in the indicators is going to continue. With the key figures of the total economy, the gross domestic product, they are looking at a three-and-a-quarter per cent return at the end of this financial year, and a two-and-a-half per cent for the next financial year. They are expecting wages to continue to grow. They are around about 4 per cent.

PN42

And of course, despite that they are still expecting employment to continue to grow. They are expecting another 100,000 jobs in Australia to the end of this

year, and the forecast is for another 250,000 jobs in the year after, which doesn't leave too many unemployed people in Australia. The Australian economy, as I said, is forecast to grow at three-and-a-quarter per cent for this year, which is significantly higher than last year, and it is expected to increase again next year. The major driver of growth in the Australian economy is strong world demand for Australian commodities, which are, to quote the report:

PN43

...boosting business investments, supporting growth in corporate profits and household incomes, and establishing conditions favourable to increasing exports.

PN44

As I mentioned, and it is on page 4, the key - the major economic parameters show that there is an expectation GDP is going to continue to grow next year, into the future. The employment will continue to grow this year, into the future. Wages: they are estimating the wage price index will continue at around about the 4 per cent mark, and CPI considered to be under control. The outlook for consumption growth is considered to be moderate, with it - to strengthen slightly. In reference to investment, the treasury says investment has eased from previous highs, but remains on a growth path, and the climate for investment remains strong. To quote:

PN45

The investment environment remains favourable, particularly for the mining sector, new buildings and structures. With the cost of capital remaining low, corporate finance is healthy and capacity utilisation around record high.

PN46

The treasury expects public final demand of three-and-a-quarter per cent in the year, reflecting large public investment and spending at all levels of Government. Net growth of exports is expected to be 4 per cent this year, and up to 6 per cent in 2007 and 8. Specifically in the labour market, the treasury says the outlook is for employment to moderate to 1 per cent, but that has already been exceeded this year, and they have increased that estimate to two-and-a-quarter per cent. Unemployment has fallen further and is now forecast to continue below 5 per cent.

PN47

The treasury comment on CPI is the treasury forecast a benign outlook for inflation, forecast for CPI to increase by 3 per cent this year and by lesser numbers in the outer years. The outlook for Tasmania is:

PN48

Tasmania is expected to continue with strong economic growth, albeit coming off the record highs of previous years.

PN49

I think probably the easiest way to deal with that is to quote from the submission of the Tasmanian Government to the Fair Pay Commission earlier this year, where they said:

PN50

According to the Australian Bureau of Statistics in the first month of 2006/7, full-time employment has increased, while part-time employment has eased. There was modest growth in total hours worked in the first half of 2006/7, despite the easing in total employment from its record highs in mid-2006. These employment trends have resulted in downward revision of the employment growth forecast, but it is still expected to show growth.

PN51

And as I mentioned earlier, there have been 1700 jobs in the year to date. At the time of the 2006/7 budget, treasury forecast an average participation rate at 61.75 per cent. But also, as I mentioned, that has fallen away due to the withdrawal of somewhere around 2 and 3 per cent of women from the workforce, and then they have downgraded that estimate to 60.75 per cent. In terms of unemployment, the effect of the downward revision of the unemployment growth forecast has been offset by easing the participation rate, with the result that the forecast unemployment rate remains unchanged at 6.25.

PN52

And as we know, that forecast has subsequently been easily surpassed. In the September quarter 2006, private investment was below its regular - recent highs, as a number of major investment projects have been to completion. However, the level of investment remains well above the long-term trend. Construction activities expect to continue at high levels, with the value of buildings approvals growing strongly in the first half of 2006/7. Although business surveys have shown some easing in confidence, the majority of Tasmanian businesses expect economic conditions in the State to remain strong or to improve over the next 12 months.

PN53

And indeed, that is a sentiment that is borne out in the census survey of small and medium-sized business in Tasmania, where nearly 75 per cent of businesses surveyed indicated significant confidence and improved outcomes in the next 12 months. The population growth and the wealth effect associated with high property prices have continued to support continued growth in consumption. The rebound in Tasmania's exports is expected to continue. The appreciation of the Australian dollar constrained the demand, but exports have rebounded strongly since that time.

PN54

The upturn in the value of exports since mid-2004 has largely been driven by strong increases in commodity prices. The value of Tasmania's overseas merchandise exports grew by 23.4 per cent to 3.3 billion in the normal - in the year to November 2006, the highest ever on record. Tasmania's major exporting markets, being Hong Kong or China and Japan, have favourable

economic outlooks, as Japan has experienced improved economic conditions and China's rapid economic expansion is expected to continue.

PN55

COMMISSIONER ABEY: Mr Cocker, table 3 on page 4, relating to Tasmanian economic outlook, do you know what the date of that source is approximately?

PN56

MR COCKER: Yes. That is from the document I am quoting from at the moment. It is the Tasmanian Government submission to the Fair Pay Commission, and the date was what?

PN57

COMMISSIONER ABEY: It would have been some little time ago, you say?

PN58

MR COCKER: It would have been a couple of months ago, yes.

PN59

COMMISSIONER ABEY: Just at first glance, the numbers seem a little bit different to the estimates that were contained in the recent budget papers, but I don't want to interrupt your flow. But if it is - - -

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MR EVANS: If I may just assist on that, Commissioner?

PN61

COMMISSIONER ABEY: Mr Evans?

PN62

MR EVANS: The AFPC submission was lodged in early March of this year, and the data in relation to the submission to the AFPC was compiled the month before that.

PN63

COMMISSIONER ABEY: Yes, thank you, Mr Evans. That would explain any differential - thank you.

PN64

MR COCKER: Yes. I think it is safe to say, Commissioner, that the optimism levels rose between this document and the budget. And in fact, the budget is suggesting things are even stronger than this report.

PN65

COMMISSIONER ABEY: Yes, I think that is a fair comment.

PN66

MR COCKER: The forecast for the Tasmanian CPI again is moderate. Petrol prices have had a strange effect, which I will talk about later. But the CPI is considered to be relatively benign. In the table, it is suggesting that it will stay below 3 per cent for Tasmania as well. There has been strong population growth in Tasmania, although that has eased in the last year. But considered together, and to quote:

PN67

Considered together, these factors suggest the growth in Tasmanian economic activity for 2006/7 will remain above the long-term average -

PN68

but below perhaps some of the very recent high growth experienced in the State. To turn to wages, the wage environment as it exists in Australia at the moment and looking at some trends in wage growths in the Australian economy: Australia has several measures of wage growth. That can, at times, present different signals on wage trends. And these differences occur because the series are designed to measure different concepts. But the four most commonly used measures include average weekly earnings of non-farm wage and salary earners.

PN69

Now, the ABS report category 6302 February 2007 indicates that the average weekly earnings in Australia to February 2007 increased by 4.4 per cent, to a figure of \$856.10, while the average weekly earnings for full-time employees increased by 3 per cent for the year, to be \$1115.90, the Tasmanian equivalent figures, the average weekly earnings to year ending February increased 2 per cent for the quarter and 4.1 per cent for the year to a figure of \$747.10. For all Tasmanian full time employees the average weekly earnings figure now is \$1016.70 an increase of 1.7 per cent for the quarter and 5.5 per cent for the year ending February 2007.

PN70

The second column we use to measure is the average weekly ordinary times earnings, AWOTE, which is derived from the same survey that includes only the ordinary time earnings of adults working full time. And for the year to February 2006 in Australia the AWOTE increased by 3.4 per cent. For Tasmania the rise was even more, there was an increase of 1.8 per cent in the quarter and 5.7 per cent for the year to February 2007. Tasmania's figure there is now sitting at \$981.50.

PN71

There is also the average compensation per non-farm employee, also published as part of ABS quarterly national accounts, 5206.0 referred to as average earnings of the national accounts. For this figure for the quarter saw growth of 1.7 per cent for the year and for the year to December it was 4.2 per cent. The other indicator and perhaps the one most useful is the wage price index. This forms part of the labour price index, survey category number 6345.0 of the ABS.

PN72

During the March quarter in Australia the wage price index increased by 1 per cent and it had a rise of 4.1 per cent for the year to March 2007. In Tasmania the figures were 1.4 per cent for the quarter and 4 and a half per cent for the year to March 2007. The first three of those measures, the first series, they are all measures of the wage bill, they are designed to measure average level of wages and labour costs for employees. As these are measures of labour costs

per employee their movement will reflect both changes in wage rates but also compositional change in the labour force.

PN73

Those compositional changes that will affect wages might include a change in the share of full and part time work, or increases in the number of high paid full time jobs as compared to low part time jobs, etcetera. The AENA differs from the other two wage measures as it incorporates the major non-wage costs of superannuation, redundancy payments and workers compensation, therefore any of those can affect that figure, although wage payments will remain the same.

PN74

The wage price index is designed to measure changes in wage movements rather than levels and unlike the AENA it does not incorporate non-wage costs. The wage price index is constructed and measures cost of purchasing the same quantity and quality of input of labour. It is analogous in its construction to the CPI, hence the wage price index is less subject to the compositional change, less volatile than other measures of wage movements.

PN75

As the wage price index is not affected by compositional change, it is the best measure to assess the economic impact of wage changes to the employer. The wage price index is the Reserve Bank's preferred measure of wages growth and indeed in its decision of 2006 the Tasmanian Industrial Commission also concurred with this point when at paragraph 94 it said:

PN76

Accordingly, we agree with the Australian Commission and adopt the wage price index as the most useful indicator in our determination of the TTLC claim.

PN77

Because of timing issues with the wage case the available data will always lag a little with the timing of our decision, so even though we are now in June we will have to deal with the year ended March 2007. The applicable figure there is made up of four quarterly figures: the June quarter of point 7, the September quarter of 1.5, the December quarter of point 8 and the March quarter of 1.4, giving an annual figure of 4 and a half per cent. That figure is identical in the public and private sectors albeit that the construction does differ.

PN78

Given that that figure of 4 and a half per cent has come out of the wage price index and that forms the basis of our claim for the adjustment this year. To turn to the first of the criteria and to consider the economic position of any industry likely to be affected by the proposed award or proposed agreement, I think the first significant point to make is that it is open to any employer to seek a finding of hardship under wage principle 14 of this Commission and that no such application was forthcoming after last year's rise.

PN79

If there is any detrimental effect within an industry there is an avenue available, although that hasn't been identified. The second issue is the impact on employment. Now, the impact of the minimum wage on employment I guess is still very much contested territory. However, the case remains there is still a significant deficit of credible evidence to show that the minimum wage, that our minimum wage or the small adjustments to it have had any harmful effect. Despite a number of assertions and claims about the minimum wage, there is still no credible evidence to support the proposition that our minimum wage has a harmful effect on unemployment, or harmful effect on employment.

PN80

PRESIDENT LEARY: Just talking about the minimum wage, do you see any problem with the result which will be that Tasmanian employers now in the Federal system will have a different minimum wage to employees in the State system and I won't even get into the fact that there will be different minimum wages, it would seem, in each State?

PN81

MR COCKER: Well, I do, I mean it is undesirable.

PN82

PRESIDENT LEARY: Yes, undesirable indeed. Any easy solution?

PN83

MR COCKER: Well, I do have some ideas.

PN84

PRESIDENT LEARY: It is an issue we need to address.

PN85

MR COCKER: Clearly, if we are going to return to a system of uniformity then there is going to need to be agreement between the various Governments around Australia how these things can happen. My suggestion is the best way of achieving that is to get rid of the Commonwealth Government, but that may too be contested territory.

PN86

PRESIDENT LEARY: Other than that. Something that perhaps, you know, we can do.

PN87

MR COCKER: Well, President, I think we are stuck with this in the short term.

PN88

PRESIDENT LEARY: Yes.

PN89

MR COCKER: We have seen already Western Australia has handed down a figure of \$24.

PN90

PRESIDENT LEARY: Yes.

PN91

MR COCKER: We have seen New South Wales hand down a figure of \$27. We are asking for \$22.70.

PN92

PRESIDENT LEARY: \$27 in some cases and \$20 in other cases.

PN93

MR COCKER: The minimum wage was 27, yes.

PN94

PRESIDENT LEARY: Changes to the minimum wages and they have their quaint - what do they call it - the ARCR figure which I think is actually the minimum wage under another name.

PN95

MR COCKER: Yes, well we are going to have that problem. I mean it could be I suppose that the AFPC will come up with a number that fits, but I doubt it.

PN96

PRESIDENT LEARY: Hello. Yes, but it is something we are going to have to take into account, but it is obviously something we are going to have to live with - - -

PN97

MR COCKER: Yes, I guess - - -

PN98

PRESIDENT LEARY: - - - subject perhaps till the outcome of the next election.

PN99

MR COCKER: The other issue is timing. The AFPC is under no obligation to have a wage case. It has - - -

PN100

PRESIDENT LEARY: Although I think they have indicated mid-July.

PN101

MR COCKER: They are going - they are in the process at the moment and they are going to hand one down. But they are not required to do it annually. In fact, they are not required to have any timetable at all. So what they choose to do, we just have to wait and see. But if, you know, if there is some possibility of some sensible alignment in timing, that is something we would need to look at but - - -

PN102

PRESIDENT LEARY: Yes. I think it is an issue that is bigger than just here. It is obviously something that is affecting each state, where they have got two different sets of minimum wages to start with. And then there are anomalies

that are created from that. All right. You have no magic wand or no brilliant solution, so we won't pursue it.

PN103

MR COCKER: Sorry. To continue with the point in regards to the minimum wage, we saw significant adjustments to minimum wages last year: \$27 from the Fair Pay Commission and \$20 round Australia in the State jurisdictions. There is absolutely no evidence that those pay rises have affected employment in any deleterious way. Indeed, the Australian treasury is predicting an ongoing wage price index figure of 4 per cent for the next three years, while still anticipating steady and ongoing jobs growth.

PN104

But when you have got about 400,000 unemployed people and employment is growing by 100,000 people a year, you sort of wonder how they can sort of keep doing that. But somehow or another, I guess they are going to find more people for the workforce. But nonetheless, despite a fairly solid growth - - -

PN105

PRESIDENT LEARY: 457 visas I think is the answer, is it?

PN106

MR COCKER: Sorry?

PN107

PRESIDENT LEARY: 457 visas is the answer, isn't it?

PN108

MR COCKER: I think we would rather welcome people here than keep them as guest labour, but yes. Indeed, as was tabled in the 2006 wage case, the OECD has written a report indicating that a moderate legal minimum wage does not undermine employment. So I think in the current circumstances, it is safe to say that there is no evidence to suggest that the rise that we are seeking will harm employment. I want to also, as part of this talk about costing - in the 2006 wage case, we tabled some costing methodology produced by the ACTU, which had been through the mill of the Australian Industrial Relations Commission, survived, and was not challenged by parties to this hearing.

PN109

If it please the Commission, it would be my intention not to go through the minutiae of those calculations. I would seek to table the methodology for those who would like to look at it, and indicate that I have used a similar methodology to weight the wage rises as claimed for this year. The weighting methodology looks at the various factors that will come into effect, such as full-time/part-time/casual work, looking at the hours worked, and using the best available percentage for the composition of the Australian workforce.

PN110

It is submitted that by doing that, the rise that we are requesting in the minimum wage of \$22.70, when it is adjusted to take into account that it will be paid to junior employees, to part-time employees, to casual employees, as well as full-time employees, and applying that formula, an average figure of \$15.54 a week is generated.

PN111

PRESIDENT LEARY: In the document which I will mark A3, do we read 4.5 where you have got 4 per cent?

EXHIBIT #A3 DOCUMENT BEING READ BY MR COCKER

PN112

MR COCKER: Sorry. If I could just have that back? Which - - -

PN113

PRESIDENT LEARY: We are at point 4:

PN114

We cost a 4 per cent increase in all award rates in Tasmania -

PN115

etcetera, etcetera, etcetera. I presume it is a 4.5 per cent increase we are talking about.

PN116

MR COCKER: Sorry, yes.

PN117

PRESIDENT LEARY: Yes.

PN118

MR COCKER: What I have done is just reproduced last year's paper without updating it, to show how the system works. I could, if anyone wanted me to, go through it all, but - - -

PN119

PRESIDENT LEARY: No, no. I don't want us to take it as being a 4 per cent claim, that is all.

PN120

MR COCKER: Right. Yes, okay. Thank you.

PN121

PRESIDENT LEARY: So the 4 per cent is intended to be a 4.5 per cent?

PN122

MR COCKER: For this year?

PN123

PRESIDENT LEARY: Yes.

PN124

MR COCKER: Yes, yes. So the \$22.70 works out to be an average, when it is weighted in this way, of \$15.54 a week, which is on the minimum wage: 40 cents an hour - 41 cents an hour, or 2.9 per cent. Again, in the current economic climate, it is hard to see that causing hardship. Again, if we look at what we have asked for in terms of the awards, where we have asked for a

four-and-a-half per cent rise across all categories, that provides a range from \$22.70 up to \$37.90 across the award.

PN125

But based on last year's calculation and a weighted figure, last year was \$24.17; this year it works out just on \$25 a week, weighted across the award levels as per methodology outlined in the document. And if that is also then weighted and applied to full-time, part-time, casual and junior employees, then we come up with a figure of \$17.11, or 45 cents an hour. And I can, if it would assist the Commission - - -

PN126

PRESIDENT LEARY: When we talk about awards, are we still only talking - - -

PN127

MR COCKER: There is a table - a chart that shows that.

PN128

PRESIDENT LEARY: Sorry. When we are talking about awards, are we still only talking about private sector awards?

PN129

MR COCKER: Private sector awards, Commissioner, yes, only.

PN130

PRESIDENT LEARY: Okay. Are we going to talk about public sector awards at some stage today?

PN131

MR COCKER: I think the intention is to look at the wage fixing principles, to amend them in a way that is going to facilitate the modernisation of the public sector awards.

PN132

PRESIDENT LEARY: Okay.

PN133

MR COCKER: Thank you.

PN134

PRESIDENT LEARY: I will mark the document titled Costing of a 4 Per Cent Increase etcetera A4.

EXHIBIT #A4 DOCUMENT TITLED COSTING OF A 4 PER CENT INCREASE

PN135

MR COCKER: And that sets out how the figure of \$17.11 is arrived at. Again, it is difficult to see 45 cents an hour creating any particular hardship in these buoyant economic times. Indeed, given the constant reporting of skill shortages in the Tasmanian economy, I suggest that is more likely that the

proposed rises will actually be soaking up over-award components rather than providing increases in pay. But it will act to make the awards more relevant. There is another attachment which supports attachment 2.

PN136

Again, this is identical to the information provided to the wage case last year, and is provided for supporting information. It talks about the coverage of this decision and to whom it may apply, and the various assumptions that underpin the calculations. Attachment 2 we would say is the methodology and the way that that information is converted into figures.

PN137

PRESIDENT LEARY: I will mark attachment - what is noted as attachment 3 exhibit A5.

EXHIBIT #A5 DOCUMENT NOTED AS ATTACHMENT 3

PN138

MR COCKER: On the attachment - sorry, exhibit 2 I think it was - yes, exhibit - - -

PN139

PRESIDENT LEARY: That was exhibit A2, yes.

PN140

MR COCKER: A2, yes. Thank you. Table 10 is a small calculation which sets out the aggregate wage outcome for our proposed rises. It is a moderate and economically sustainable claim, as we can see. The aggregate addition to ordinary time earnings in Tasmania is .23 per cent. And based again on the mathematic methodology that we used last year, that has a potential CPI impact of .04 per cent or less. I think it can be safely said that the economic impact is negligible arising from these rises - coming from these rises.

PN141

To summarise, I think I would say that our claim is moderate and sustainable. The third issue which the Commission believes should be addressed is the public interest. I would submit that considerations of public interest need to consider the requirements of the Tasmanian Act, the fairness therefore to employees and the consideration of the needs of the employees who are in the categories that we are looking at, that is low-paid workers in Tasmania. I guess the key requirement coming out of the Tasmanian Industrial Relations Act 1984 is that the Commission has to have regard to fairness in setting the annual adjustment to the minimum wage.

PN142

Section 47AA says that the purpose of the division is to establish a safety net of fair minimum conditions of employment. Section 47AB says that the minimum weekly wage for an adult full-time employee is the Tasmanian minimum wage as determined annually by the Commission. And section 20 requires the Commission to act according to equity and good conscience. I

guess if we sum all that up, in my view the requirements provide key words of fairness, equity and good conscience. What might that imply for minimum wage workers?

PN143

I guess at the end of the day, we would expect that this would provide a decision that is equitable and just. I also would think it is necessary to note that in applying a fairness test, the setting of the minimum wage will have to be on what I would call a best-fit basis. It is not possible to take into consideration every possible circumstance that might arise in an enterprise or with an employee. We would have to come up with a decision that has the maximum benefit for the maximum number of people.

PN144

And while there may well be individual circumstances that don't quite fit, that a fair test will be on a best-fit basis. And the key issue is to ensure the protection of interests of those who are in non-existent or weak bargaining positions. I submit that this claim is about the maintenance of fair wages. The levels of those wages have been set in previous times, and whatever that level was, I guess we build on rather than revisit. And one of the key elements of fairness is equitably allowing all working Tasmanians to share in the prosperity of the times.

PN145

Unions Tasmania is not seeking more than that which is required to achieve a maintenance of that position. We are about ensuring that, consistent with the legislative requirements, fair award rates are maintained. The claim that we have before the Commission ensures that fairness by maintaining both the real value and the relative value of the minimum award wages. And I believe the Commission has a very important role to play in maintaining the fairness of the minimum wages for several reasons.

PN146

Firstly, the evidence is clear that it is more difficult for award minimum-wage workers to rely on bargaining, simply because they are in a position where they lack bargaining power. On the other hand, available evidence shows that these award and minimum wage increases don't reduce or eliminate the incentive to bargain. It should be noted, I think, that it would not be fair for award and minimum-wage workers to fall further behind community standards, while many in the community are experiencing good times.

PN147

This pay rise is a catch-up. It is anything up to 12 months behind what others in the community have been able to achieve. And I think it is also critical to note that award-wage earners have needs associated with living, where the costs are heavily weighted towards the basics of life and not the luxuries. And I will deal with that in a moment but - - -

PN148

PRESIDENT LEARY: What do you mean it is a catch-up, that it is 12 months behind?

PN149

MR COCKER: Well, we are looking at economic data for the last 12 months. People in the workforce have been receiving extra money and other pay rises for all that 12 months.

PN150

PRESIDENT LEARY: Which people are we talking about?

PN151

MR COCKER: Sorry?

PN152

PRESIDENT LEARY: Which people are we talking about? Are you talking about people who have got enterprise bargaining agreements and those sorts of things?

PN153

MR COCKER: Yes.

PN154

PRESIDENT LEARY: Okay.

PN155

MR COCKER: All those workers that are feeding into the 5 and 6 per cent rises in average weekly earnings that I referred to earlier.

PN156

PRESIDENT LEARY: In the booming States.

PN157

MR COCKER: Well, Tasmania was actually - did very well in those figures.

PN158

COMMISSIONER ABEY: Yes.

PN159

PRESIDENT LEARY: Yes, it appears to have done.

PN160

MR COCKER: If I recall, I think average weekly earnings were increased by over 5 per cent in Tasmania.

PN161

PRESIDENT LEARY: Yes.

PN162

MR COCKER: But some workers have got that; others have got to wait for this case, and there is a time lag. So this - - -

PN163

PRESIDENT LEARY: Yes. So we are looking at the difference between people on awards and people on enterprise bargainings. That is what you mean by catching up, yes.

PN164

MR COCKER: Well, both enterprise bargaining and those who are in the happy position of having skills and knowledge in demand who can perhaps set their own rates.

PN165

PRESIDENT LEARY: Yes.

PN166

MR COCKER: This claim - talking about the tack of bargaining power, I think it is safe to say that this claim is brought on behalf of those workers who are not in a position to bargain. It should be recognised I think that there is a widening of the differential between bargaining outcomes and award minimum wages, which will further encourage those employees who actively resist bargaining by the employees. There is evidence that the incidence of employees under awards and certified agreements primarily reflect the preferences of their employer.

PN167

There is, and will remain after the granting of the current claim, a significant gap between award wages and the outcomes from bargaining arrangements. And therefore there is still considerable incentive for employees to seek to collectively or individually make arrangements in excess of the minimum. In fact, this moderate claim will probably not even reduce the gap between award and bargaining wages - well, it will reduce it. It will - the gap will probably get larger over the 12 months.

PN168

There is no evidence that recent increases in award rates of pay have slowed the growth in bargaining. In fact, the contrary is probably the case, as we have seen a continuing decline in the number of award-reliant employees in Australia. The considerable gap between award rates of pay and those obtained through individual or collective bargaining is currently sufficient incentive for award workers to agitate for enterprise agreements.

PN169

To deal with the issue of award wage earners falling further behind: awarding this claim will ensure that the wages of award-dependent workers increase in a way that is comparable to the increases available to others in the community, because the claim is based on the wage price index as a measure of general wage movement. It is an index measuring the changes in wage movements rather than levels. And as I said before, it is analogous to the CPI. The significant advantage of this over the other measures is it doesn't rely on data for the compositional change of the workforce, and it excludes major non-wage costs. And for all of those reasons, the WPI remains the appropriate indicator, as indeed the Commission concurred in the 2006 case.

PN170

This claim is moderate at 4 and a half per cent but to maintain the relative position of minimum wage and award workers the claim should be granted in full. Any discount is unwarranted in the current economic circumstances. I also - I think it is necessary to have a look at the CPI and gain an

understanding of why the CPI will not provide a fair outcome in this particular case and to do so it is necessary to have a look at the indicators of living standards and the application of the CPI.

PN171

A lot of what I am about to say may be familiar as it is consistent with the submission that was made on this material last year, with some updating. The indicators that we are talking about are provided by the Australian Bureau of Statistics publication Household Expenditure Survey. The last of these surveys was done in September 2004 and amended and reissued in February 2006. It is a sub-sample of households and comes from the full survey of income and housing.

PN172

The survey collects information on the expenditure of income and other characteristics of households and private dwellings throughout Australia, surveyed some 7000 and one of the key uses of the survey is to conduct standards of living studies. To quote:

PN173

Levels and composition of household expenditure are used to indicate the standard of living ...(reads)... can be considered to have a higher standard of living than other households.

PN174

Results from the survey can be presented according to the principal source of household income. The ACTU commissioned unpublished data from this case to provide an indicator of the standards of living of the population. Households whose principal source of household income is - the survey is for those whose principal income is wages and salaries or the extra information we sought covered that category.

PN175

The data was provided for the quintile groups which represent 20 per cent groupings of wage earners and they are in ascending order according to the household's income. On page 5 table 4 sets out the brackets for the quintiles as they were at that time. Indeed, table 4 provides a great deal of information on the characteristics. The lowest quintile household in the population are the central concern in this case, those whose principal income is wages and salaries and who are in the lowest quintile.

PN176

While workers who stand to benefit from this case are in other quintiles, they are disproportionately found in the bottom two and predominantly in the bottom quintile. It has been argued that the first quintile households don't represent award workers but the question was dealt with in the study by Anthony O'Donnell at the Centre for Employment and Labour Studies at Melbourne's University and he came to the conclusion, dealing with that question, he said the Government and employer groups often used the gambit that low wage is not a problem because many low wage workers are secondary earners, that is women and young people living in prosperous households.

PN177

Most low wage workers do not in fact, fall into this category. In fact, it is more common to have the one household - one person even, or one income household in this first quintile, so at the time of the survey the first quintile comprised households with incomes up to \$850 a week. The average income in this quintile was \$643 a week, 90 per cent of which is sourced in wages and salaries. The number of employed persons on average in those households was 1.2 and 46 per cent of those households was a lone person.

PN178

The average number of dependent children in those households was only .4. In the four years since that was originally done the numbers have moved but the basic premise is the same. The quintile figure of course has gone up a little bit since then. The ACTU commissioned further data on detailed expenditure items for the households where that principal source of income was wages and salaries, and that data is set out in table 5 of the attachment, exhibit 2A.

PN179

PRESIDENT LEARY: On the second quintile the mean gross household income per week, should that be \$1000, not 10,000?

PN180

MR COCKER: Yes, it should. I did pick that up last night. So we can see a pattern of expenditure was developed based on that survey and that pattern of expenditure is set out in table 5 and the categories of expenditure in that actually coincides with the categories that are used for calculating the CPI, the groupings for the CPI. From table 5 and defining the necessities of living as being housing, utilities, food, clothing and transport, the unpublished data obtained from the ABS indicates the following percentages of total goods and services expenditure expended upon necessities and that information is found in table 6.

PN181

We see housing, fuel, power, food, clothing, transport make up 58.5 per cent of the expenditure of those households and for information I have included in that table the CPI figures in those areas. Housing for Hobart came in at 2.9. There is no specific category for fuel and power. Food came in at 4.7. Clothing fell by .1 per cent. Well, that probably won't be much comfort for the Blundstones workers. Transport was an interesting one, that actually came as quite a surprise to me, having a little look at transport and finding that there was only a CPI figure of .1 attached to that because I think there is a general feeling that petrol has got very expensive, but it is perhaps an anomaly in the numbers.

PN182

When you look at the sub components of that transport there are six of them. The price of cars went up by half a per cent; the price of repairs 2.9 per cent; parts 4.3 per cent; other transport services 3.6 per cent; urban transport went up 2 per cent but all of those increases were actually offset in this CPI figure because petrol, believe it or not, went down by 4 and a half per cent over the year.

PN183

PRESIDENT LEARY: That's a surprise.

PN184

MR COCKER: It is a surprise and I think it is actually something of an anomaly. In March 2005 the index was sitting on 160; by March 2006 the index had increased to 188; by July 2006 the index had gone to 208; by September it was 203 but then for the March quarter there was apparently a decline in petrol prices and the index dropped back to 180 so over the 12 months that represents a fall in the price although over the two years it is actually a 12 and a half per cent increase and I think we all know also that since March the price of petrol has gone back up again.

PN185

So I think that that transport figure is a little bit of an anomaly and when you consider that the sorts of households we are talking about are far more likely to be spending money on petrol than new cars then that point 1 is probably way understated.

PN186

PRESIDENT LEARY: I guess a lot of it also depends on what point in time you start taking these figures?

PN187

COMMISSIONER ABEY: Mr Cocker, looking at table 5 and 6 together you don't have the expenditure for the other quartiles on the necessities, but I suspect it would be a reasonable assumption that that percentage on necessities would decrease as income increases, is that right?

PN188

MR COCKER: Yes, yes, that is right.

PN189

COMMISSIONER ABEY: The second point, and I assume that the figures bear that out, but - yes. The second point I am a bit surprised about the categories. To me if you said the first quartile households are expending 58.5 per cent on necessities, therefore they are spending 40 per cent on optionals, such as entertainment, but just looking very quickly, things like medical care and health expenses are not included as a necessity. It is a rather odd categorisation I would have thought? Frankly I would have thought the figure would, on necessities, would be much, much higher than 58.5 per cent.

PN190

MR COCKER: Well, certainly if you do bring in medical and bearing in mind that this quintile probably forks out less for its medical care than the higher quintiles because they are probably on assisted health cards and so on and not paying health insurance, but the figure for medical was what, \$28.83, which is about five points - - -

PN191

COMMISSIONER ABEY: I don't want to labour the point but it just seems - I don't know where - whose definition of necessities this is. To me it seems to miss out categories that I would have, on a common sense basis, included in

a necessity character because it is somewhat misleading to say that quintile one households are only spending 58.5 per cent of their income on necessities, I would have thought.

PN192

MR COCKER: Well, I take your point and I guess the corollary to that is that that figure only gets worse if you add other things into it so that - - -

PN193

PRESIDENT LEARY: Sure.

PN194

COMMISSIONER ABEY: It just seems strange, I would have thought the - - -

PN195

PRESIDENT LEARY: It looks like they are doing pretty well.

PN196

COMMISSIONER ABEY: - - - optionals would be things like alcohol, tobacco and recreation.

PN197

MR COCKER: Yes.

PN198

COMMISSIONER ABEY: Which I would expect to be increasingly significant as the quartile would move up.

PN199

MR COCKER: I would agree, yes. Table 4, perhaps deals with that issue - sorry, table 7 deals with that issue to some extent. In that table we have listed the expenditure in descending order of proportion. And where do we find health - medical there, 4.3 per cent, yes. The critical point I guess that I want to get to out of all of this is that we have got these 11 categories - the 11 major groups of the CPI and of those which are of most significance to people in this wage bracket; in fact, ones that have increased significantly more than the headline rate of CPI. While overseas holidays and personal computers have come down in cost, the basics of life, housing, food, transport, have all gone up significantly and food of course was 4.7 per cent. To apply a headline CPI would not be doing justice to this group of people.

PN200

And again, table 8 looks at the changes in cost over two time periods, December 2004 to 2005 and March 2006 to 2007 and again I think it stands out that those key items, food, housing, in particular are much higher than the standard rate of CPI. To summarise that then and if we pool table 6 and 7 together we can see that the largest expenditure item of first quintile households, 20.7 per cent of total goods and services expenditure is housing. The cost of housing as measured by the CPI has increased much faster and while the CPI increased by 4 per cent, 2.8 per cent and 2.1 per cent over the last three years, the equivalent housing years have been 6, 3.6 and 2.9.

PN201

A similar pattern occurs for food; the CPI moving by 4, 2.8 and 2.1 and the cost of food has been 4.5, 3.6 and 4.7 respectively over those three time periods. And again with transport, even putting aside the anomaly that appears in the CPI figure for transport in the year to March, the CPI figures are 4, 2.8 and 2.1, compared to transport increases 6.2, 3.9 and 0.1. So over a period of years that cost has gone up significantly more than CPI. Those three, as we saw from the chart, are more than half of the household expenditure.

PN202

I think the thing which becomes quite obvious looking through this material, particularly when you look at how in table 5 people spend their income, the fact that people who rely on employee income and are in that quintile have to budget very carefully to meet their needs. And again I would emphasise that this analysis demonstrates that for minimum an award worker's application at headlines CPI rate would not be a fair outcome as it is in fact would represent a lowering of their living standards.

PN203

Another aspect of fairness is the question of relativity, as distinct to the real value of a wage, the relative value of a wage is also something that needs to be considered. We know that average weekly earnings in Tasmania are already the lowest in the country; that shows up in table 9. There is a range for full time workers of 1116 for Tasmania up to nearly \$1300 for the ACT and similarly there is a huge gap in the total earnings. Total earnings of course reduces full time earnings because of part time work and juniors etcetera.

PN204

But Tasmania is already significantly behind the next closest, which is South Australia, 40-odd dollars a week behind in full-time earnings and \$30 in total earnings. And we should I think, at a time when the economy is strong, not be allowing that gap to widen by choice, by decision. We are aiming through this claim to add 22.70 to the minimum wage and as I said a range of 22.70 to 37.90 on the award scales. As I mentioned the West Australian Commission has already awarded \$24 and the New South Wales Commission \$27. Any discounting on the Tasmanian claim will only widen that gap further.

PN205

I guess the second aspect of relativity is that by tying the decision to the wage price index we are in fact measuring broader community movement in wages and to apply anything less than the equivalent proportional adjustment is to reduce the position of award and minimum wage workers relative to others in the community and I would submit that that is not a fair outcome. And if we are to have any discounting then there needs to be compelling reason.

PN206

In conclusion on other matters, if the Commission pleases, the calculation of meal allowances follows a well travelled past. The calculation has been supplied to our friends at the table and I think we are in agreement that the amended figure for meal allowances should be \$14.10. So in conclusion, if the Commission pleases - - -

PN207

PRESIDENT LEARY: Just before you conclude - - -

PN208

MR COCKER: Sorry.

PN209

PRESIDENT LEARY: - - - can I just draw your attention; the application that was filed on 2 May was speaking about a 4 per cent increase and you have amended that, as you have amended the minimum wage, but you also had a claim to obtain a special increase of rates of travelling allowances in all relevant awards, is that still being pursued or is that going to be done separately?

PN210

MR COCKER: I have amended that to read meal allowances in the letter of early this week.

PN211

PRESIDENT LEARY: Yes.

PN212

MR COCKER: It is a similar mistake I made last year. I am not after travelling allowances, no, just looking at meal allowances.

PN213

PRESIDENT LEARY: All right. So we ignore claim number 3 in the original application and the letter reflects what you are pursuing.

PN214

MR COCKER: Thank you, yes.

PN215

PRESIDENT LEARY: Okay, that is fine, thank you.

PN216

MR COCKER: And that figure is \$14.10.

PN217

PRESIDENT LEARY: Yes.

PN218

MR COCKER: So in conclusion Unions Tasmania has supported an increase to the minimum wage and to all award rates at the rise in wages as indicated by movement in the wage price index for the year to March 2007 of four and a half per cent for minimum wages; this is an increase of \$22.70 a week. It is submitted that in the current buoyant economy that any discounting of that amount will not produce a fair outcome. Thank you.

PN219

COMMISSIONER ABEY: Mr Cocker, do you have the base of the calculation for the meal allowance one?

PN220

MR COCKER: Yes. You would like me to hand it up?

PN221

COMMISSIONER ABEY: Can you hand it up, that is what I am getting at?

PN222

MR COCKER: Yes. I will do that.

PN223

COMMISSIONER ABEY: Thank you.

PN224

PRESIDENT LEARY: Mr Lynch, Mr Jacobson, did you want to say anything? All right. Mr Evans, Mr Baker or Mr Buchanan, who wants to go next?

PN225

MR BAKER: Well, you have got the lectern, you can go.

PN226

MR BUCHANAN: Thank you.

PN227

PRESIDENT LEARY: You can share it.

PN228

MR BUCHANAN: No, we don't do that, President.

PN229

PRESIDENT LEARY: We would encourage that.

PN230

MR BUCHANAN: We are very sharing people. May it please the Commission, it has certainly been an interesting exercise for me to get this particular task of the State wage case and I had actually forgotten that, when I actually did the research for this, it is not my first appearance at a State wage case and - although I was tempted to drive to Lyndhurst this morning but I did find my way to the correct - - -

PN231

PRESIDENT LEARY: It was that far back, was it?

PN232

MR BUCHANAN: It was a long time ago actually, President, I don't think it was a particularly detailed submission, but it was in fact in 1989 that I did make an appearance and I had forgotten until I read that particular decision.

PN233

PRESIDENT LEARY: There you go.

PN234

MR BUCHANAN: But it is certainly a long time ago, you know, and just out of interest I couldn't resist the temptation to actually look at what happened in 1989; it was a pretty significant year all round, the Berlin wall came down
- - -

PN235

PRESIDENT LEARY: There was the airline dispute.

PN236

MR BUCHANAN: You are stealing my thunder, President.

PN237

PRESIDENT LEARY: I beg your - so I will be quiet. That was pretty significant for me, yes.

PN238

MR BUCHANAN: Tiananmen Square was 1989, The Exxon Valdez ran aground and the San Francisco earthquake all hit in 1989. A bit closer to home I noted that the Prime Minister was setting up - was hosting a meeting to try and set up a new body called APEC and I am sure that the people of Sydney will thank him for that in the next couple of months.

PN239

PRESIDENT LEARY: Yes, yes.

PN240

MR BUCHANAN: He was talking about climate change and the effects on the South Pacific, so nothing much changed there.

PN241

PRESIDENT LEARY: It was a different Prime Minister though.

PN242

MR BUCHANAN: It was a different Prime Minister, President. And of course the airline pilots dispute; I had almost forgotten the joys of flying by Hercules, but - and look, really close to home the Prime Minister actually publicly defended his decision not to re-appoint Staples J to the Federal Commission and that seems like only yesterday to me when that debate was going on.

PN243

PRESIDENT LEARY: Yes.

PN244

MR BUCHANAN: And look, and just one more that some of us who like a drink can take some heart from, the first liver transplant using a live donor took place at the Chicago Medical Centre in 1989, so I do take some comfort with that, Members of the Bench. But to a more relevant note, it was interesting, the 1989 decision that I had forgotten about, was in fact the structural efficiency decision. It was - I guess it was the commencement of the way forward to a situation where we moved away from CPIs for the determining or not of national wage cases and a focus on bargaining. I guess the first step of that was the famous or infamous second tier decision, which some of us recall perhaps not quite so fondly in some respects and it did move on.

PN245

And I guess here lies the point, because for me, President, after that I moved into an area that was into the bargaining sector and these sorts of cases

gradually, with due apologies, attracted less of my attention because our focus was on bargaining with our employees. Now, I have to say at the outset that when I got this particular job and started to look at it I was actually quite surprised; genuinely surprised to see just how our wage fixation system had moved forward since 1989. Because I thought we were moving into a bargaining system, yet when I read the more - and that was certainly reinforced by the structural efficiency principle, but when I read more recently decisions I find that in fact yes, some are bargaining and others are getting quite reasonable or significant increases through this particular forum.

PN246

And it did surprise me and I make that point at the outset and that really is a theme of the submission I am going to put to you today is that perhaps we are losing sight of the fact that the system is meant to be about bargaining and I don't apologise for that and I will talk more about that as I move through it. The submissions I have got for you this morning I guess we can categorise in these terms; first point I want to address is just the Fair Pay Commission, the current hearing that is going on and it has already been touched on this morning.

PN247

I want to look then at this question of equity for the lower paid that Mr Cocker has certainly been talking about this morning and just how serious and how real is this issue. Certainly when I look at the state of the economy and I don't know whether I will disappoint you or please you, Members of the Bench, but I don't intend to go into a detailed analysis of the economy. It seems to me that a lot of those arguments have been put over the years and we won't be resiling from those, but I won't be going into a great deal of depth.

PN248

I want to look at the effects of the Unions Tasmania claim, just what it means and I think lastly and most importantly what we think should be the position and it shouldn't surprise you that we have a somewhat contrary view than the Union Tasmania's claim. So first of all, the Fair Pay Commission, and I noted your comments, President, and I think as I flagged to the parties and to the Commission hopefully, I didn't intend to raise this; I wasn't seeking to make this a threshold issue and delay proceedings, I think that would be unwise.

PN249

Someone who will remain nameless suggested I think to me that I was leading with my chin because this argument had already been run and lost last year, but I do think that we are in a very different situation in 2007 than the way I read the papers from last year's decision. No one really knew what the Australian Fair Pay Commission was about at that time and more importantly I guess - - -

PN250

PRESIDENT LEARY: Are you saying we now do?

PN251

MR BUCHANAN: Well, I think we do, I think we have got a very clear picture. I am not going to judge that Commission but I think we are getting a

fairly clear picture of how it is going about its job. I think particularly significant is the fact that we are pretty clear - and certainly it is the advice I got from my Federal colleagues and I noted Professor Harper's speech on Tuesday, that a number have already commented on, that we can expect that decision within probably two weeks; certainly the first two weeks of July.

PN252

My submission to you on the issue really is that you should delay a decision and take that - the Australian Fair Pay Commission's decision into account. It may well be that it would be appropriate for the parties to come back to you or at least provide some written comments on that decision. Now, why do I say that? Well, apart from the practicality factor that it is due, which was certainly quite different to last year's debate, I do think this is a genuine public interest issue. We do have a situation where I think there is great confusion out there and I am not looking to ascribe as to who is right and who is wrong in all this, but the reality of the public interest is there is confusion.

PN253

If you go to the average employer and ask them, "Are you under the State award or you under NAPSA?" They won't know and I think if we are going to have vastly different outcomes and I think there is a potential for that, between the Federal system and determinations from this Commission, that is not in the public interest and it is something we should address.

PN254

I think, and I will talk a bit about it under the quantum of increase later. I think there is a potential for quite vastly different outcomes, and the reason for that is when I look at the Federal CPI, for example, it has actually dropped in both quarters, since the first Fair Pay Commission decision. I also noted comments that weren't in Professor Harper's speech, but was certainly reported, as I understand it, from a question he was asked on Tuesday at the press gallery that he is going to take into account, the tax cuts for the lower paid that were in this year's budget.

PN255

So I actually think, contrary to some of the advice that I have heard, that the Fair Pay Commission decision could be within this very broad range of \$12 to \$25. I actually think the Fair Pay Commission could actually come out with a very low increase this time, and I will address that in a bit more detail later on. So - - -

PN256

PRESIDENT LEARY: Well, that is what everybody was saying last time.

PN257

MR BUCHANAN: They certainly were, but I think - - -

PN258

DEPUTY PRESIDENT SHELLEY: And there is an election this year.

PN259

MR BUCHANAN: Well, Commissioner, one could take that cynical view, that perhaps they will - that politics might intrude, and certainly I would have

thought, if I was Mr Howard, I don't think I would want the Fair Pay Commission to be handing down a very small increase, but I just think it is - I think it is possible. I will actually look at the numbers later, and I think basically, and I heard Professor Harper say that when he was in Hobart last year, I think actually that the first decision was effectively CPI, and at best a little bit more than CPI, when you look at the numbers.

PN260

And he certainly said that privately, I think, whether it was at a lunch table, that I think two of the Commissioners were present at, or whether it was afterwards. But I do recall him saying that, and the numbers tend to bear that out. So, Members of the Bench, I don't intend to labour that point. I just think we should take that on board. It could be - I have heard numbers that it will be at least \$20. I have heard some say it will be 12. I just think we are at a very fortunate position.

PN261

PRESIDENT LEARY: In other words, nobody knows.

PN262

MR BUCHANAN: Nobody knows, and that is why we should wait and be clear on it, what its impact is, because if I was right, if my pessimistic or optimistic scenario, whichever way you want to look at it, and it is a very small increase, and this claim was actually granted, there would be a very significant disparity between State award rates, and of course those under NAPSAs and Federal awards, but certainly the NAPSAs. I don't think that is in the public interest, and it is certainly not in the public interest, I think, that - in which you would start to see, I would say, a very quick movement to the Federal system from those who aren't in it at the moment. And that is not a particularly difficult exercise.

PN263

I would say the economics would start to stack up very strongly. Anyway, that is pure speculation. All my position is that let us be clear on it when it happens. I want to move now to this question of equity, equity for the lower paid, which is very much the thrust of what these sort of cases are about, and, Members of the Bench, if I can actually find my exhibits I will pass up one.

PN264

PRESIDENT LEARY: Mark it R1.

**EXHIBIT #R1 PRESENTATION BY MARK WOODEN CALLED
MINIMUM WAGES INCREASES, DO WORKERS CARE**

PN265

MR BUCHANAN: Members of the Bench, this particular exhibit actually comes from a presentation that was made by Mark Wooden, from the Melbourne Institute. It is a presentation that he made recently, called Minimum Wage Increases, Do Workers Care. And I think the data is actually quite interesting, and it is sourced from the HILDA survey, and I have put an

explanation of what the HILDA survey is below that. It is the Household Income and Labour Dynamics in Australia survey, that is carried out by I would call social research bodies. Could you actually look at the table? What it is actually showing us is the net percentage change in hourly wages, 2001 to 2004 - that is the most recent data that came up - by hourly wage decile. So effectively what it is saying is, if you look at the first decile, that there has been very significant increases.

PN266

So these are the lowest paid in the - of the hourly wage community. The median increase, 16.4. That is the second highest. Interestingly enough, the highest was actually the tenth decile, those who are earning the most, and in the mean, in fact the percentage change during that period, this was the highest. So what that is really telling us, I think is quite significant. Wages have grown very strongly at the bottom of the wages distribution, and there has been significant increases. So this argument that the lowest paid in the community are doing poorly isn't actually borne out by that sort of statistics. and I think that is quite a significant bit of data.

PN267

COMMISSIONER ABEY: Mr Buchanan, just so I understand that, that means that in the first decile the average hourly rate in the period 2001 to 2004 increased by 14.3 per cent; is that right?

PN268

MR BUCHANAN: That is correct.

PN269

COMMISSIONER ABEY: That is over four years, three years.

PN270

MR BUCHANAN: That is correct, Commissioner.

PN271

COMMISSIONER ABEY: Three and a half per cent a year?

PN272

MR BUCHANAN: That is what this data is bearing out.

PN273

PRESIDENT LEARY: Are these award rates?

PN274

MR BUCHANAN: They are hourly rates. I mean, by and large I would expect they to be award. I can't give you a - - -

PN275

PRESIDENT LEARY: Yes. Which are vastly different to rates in enterprise bargaining agreements anyway, of which the data is very difficult - - -

PN276

MR BUCHANAN: Well, I think they are - look, sorry, I think they are overall rates - - -

PN277

PRESIDENT LEARY: Are they?

PN278

MR BUCHANAN: - - - as measured by the survey.

PN279

PRESIDENT LEARY: Because that can skew any sort of statistic.

PN280

MR BUCHANAN: Could do. Could do. But I guess the point is that the lower - the lowest paid in the community - - -

PN281

PRESIDENT LEARY: Yes, the point that you are making is that the - - -

PN282

MR BUCHANAN: - - - are doing pretty well, compared to the spread of hourly rates paid throughout.

PN283

PRESIDENT LEARY: And if that was based only on award rates, that could be as a result of flat increases, rather than percentage increases.

PN284

MR BUCHANAN: Could well be. Could well be.

PN285

DEPUTY PRESIDENT SHELLEY: And it is the greatest percentage of the smaller amounts, so it could actually be a lower actual outcome?

PN286

MR BUCHANAN: In dollar terms?

PN287

DEPUTY PRESIDENT SHELLEY: Yes.

PN288

MR BUCHANAN: It certainly could be, Commissioner. That is the - no doubt about that. The second exhibit I would like to put up, it is just some comments on this equity issue that were made by the Fair Pay Commission last year, in last year's decision.

PN289

PRESIDENT LEARY: Thank you. I will mark that R2.

EXHIBIT #R2 COMMENTS MADE BY THE FAIR PAY COMMISSION ON THE EQUITY ISSUE

PN290

MR BUCHANAN: Well, I thought these were particularly good comments. You will note that they come from pages 62 and 63 of the decision, and I am

going to read them, because I think they certainly put a counter to the argument that I heard from Mr Cocker a little bit earlier:

PN291

Another common theme in submissions is that low wage earners should not be allowed to fall too far behind other Australians in their standard of living or their capacity to participate in the community.

PN292

And that is certainly what I heard from Mr Cocker:

PN293

This was often interpreted as requiring a wage increase in line with general wage movements -

PN294

which is what this claim is about -

PN295

or that it is appropriate that in good economic times award dependent workers should receive real increases in their wages.

PN296

Now, what this particular comment goes on to say, and again I will read it, it is really saying that you have got to take into account the full picture. You shouldn't just look at wages in isolation. So it says in the decision:

PN297

The Australian Government's modelling has shown that, once tax liabilities and cash transfers are taken into account -

PN298

and we start to talk about the social security system, as well as the tax system -

PN299

minimum wage earners with families have disposable incomes much closer to those of equivalent families on median wages that would be possible if they were entirely dependent on their wage. For example, the median full-time wage is 74 per cent higher than the standard Federal minimum wage, yet a median earner couple with two children typically has a disposable income no more than 15 per cent higher than a similar family on the standard Federal minimum wage.

PN300

This is the impact of tax and family payments.

PN301

PRESIDENT LEARY: And that is also assuming that you accept the methodology in the modelling, which is not necessarily always accepted.

PN302

MR BUCHANAN: That is quite true, President, quite true. But it is an interesting point. So I won't read the rest, but it goes on to talk about this is illustrating the broader tax transfer effects and the equalising impact it has.

And I think that is the really important point - is that you shouldn't look at these things in isolation. This is quite a more significant argument than just one straight about who has paid what in terms of their award rate or agreement rate.

PN303

The other point I would like to raise is just this question of who are the lower paid. And for what it is worth, I did take a copy of Professor Harper's speech to the press club on Tuesday, and I will tender that. You will probably be relieved to know I don't intend to go to it in any great depth, the members of the Full Bench. But I did think there were some comments that were reasonably interesting in his speech.

PN304

PRESIDENT LEARY: Thank you. I will mark the speech copy R3.

EXHIBIT #R3 COPY OF PROFESSOR HARPER'S SPEECH

PN305

MR BUCHANAN: Particularly I refer you to page 3. Yes, we move down to what is effective the third paragraph on that page:

PN306

While acknowledging the role of minimum wages in securing the social security net ...(reads)... significant numbers of low-paid workers live in high-income households.

PN307

He then goes on to talk about the social security safety net issues and the like. I think the point about - that we can lose sight of in these sorts of hearings is to think that we are talking all the time about the downtrodden, those in the poorest circumstances of the community. I am not sure that is the case, and I think that Professor Harper makes the point very eloquently. Some of these people who are low paid live in high-income households. They live at home. Are they necessarily the disadvantaged in the community? I think not. So again, let us not lose sight: who are the lower-paid? I am not quite sure. Members of the Bench, I move on to the - - -

PN308

PRESIDENT LEARY: Were you asking us the question, or was it really rhetoric?

PN309

MR BUCHANAN: I don't know. But you know, this is - it is a rhetorical question, that I do not know - it is an interesting point. There is just this assumption that this is the poorer section of our community that we are dealing with. Perhaps, but perhaps not in all cases, just to put it in context. The state of the economy - and as I indicated, I don't intend to go into the economy in great detail. I have read the past decisions, past submissions. I note Mr

Cocker's comments about these increases affecting employment. We don't resile from that view.

PN310

I am not going to put it to you in any more detailed terms than that today. I will put up though, Members of the Bench, the TCCI survey of business expectations. Going - fairly big document, you don't necessarily have to read it all, because I will point to the relevant points.

PN311

PRESIDENT LEARY: Thank you. I will mark that R4.

EXHIBIT #R4 DOCUMENT TITLED TASMANIAN SURVEY OF BUSINESS EXPECTATIONS FOR THE MARCH QUARTER 2007

PN312

MR BUCHANAN: The survey is a long-standing feature of the business community, and it has certainly been tabled in past cases. I guess the points that I wanted to draw your attention though from a - can be found in the Executive Summary. In the first paragraph on page - effectively page 1, Executive Summary:

PN313

The longer term outlook for both the national and Tasmanian economies declined in the December quarter 2006.

PN314

So this is in terms of business expectations:

PN315

The decrease recorded for the National Economic Index (49.9) of 2.8 points was marginally smaller ...(reads)... with the Tasmanian Index dropping to its lowest point since March 2001.

PN316

And then right at the bottom of the page, the final paragraph:

PN317

Finally, the composite Business Barometer Index shows us that a downturn for the economy in the near future is imminent if the downward trend of recent quarters continues.

PN318

Now, this is opinion, but it is certainly painting a far less rosy picture for the Tasmanian economy than was painted by Mr Cocker. I must say, I don't have the expectations that he does. He and I actually share a board membership of the superannuation fund that we take very seriously. If I could be as confident about the future in our investment decisions as he was about the economy, then I would be - I would sleep far more comfortably with those investment decisions at night. The facts are we can't be sure. I think the significance of

the survey is really just giving us that picture of how business is feeling at the moment. And the way business is feeling is that it is a downward trend.

PN319

PRESIDENT LEARY: It is interesting to note that the outright number one constraint on business is the availability of suitably qualified employees, which sets the market rate usually anyway.

PN320

MR BUCHANAN: Yes, that is true. That is true, President. So that is all I am going to put to you about the economy. It is not the rosy - quite as rosy, I think, as what has been painted. But have we got a strong economy at the moment? Absolutely, we do. I don't take issue with too many of Mr Cocker's points. I thought for a while he was writing the election speech for Mr Howard about the current strength, but I will take my tongue out of my cheek there.

PN321

So it is a strong economy. That is undeniable. But what we put to you is a bit of caution, that perhaps we are heading for a slower point. Enough of the economy. Unions Tasmania claim - I just wanted to put up an exhibit which is just basically where I have calculated the effects of the 4.5 per cent increase on the various base classification levels, for information only.

PN322

PRESIDENT LEARY: We will mark that R5.

EXHIBIT #R5 DOCUMENT DETAILING EFFECTS OF 4.5 PER CENT INCREASE

PN323

MR BUCHANAN: And I guess the only - the point I draw from that particular exhibit is as you can see, if a 4.5 per cent increase was granted, then the flow-through in awards would be very significant, particularly as you move up through the base rates, up to - at the top of, in this case, the metals and engineering award, \$47.30, a pretty significant weekly increase. So suffice to say that we think the impact of that claim is far too great, and I will move to that fairly shortly as to what we think it should be.

PN324

PRESIDENT LEARY: As far as you know, would most of the people in those higher classifications that would possibly get a higher increase if it was done by percentages, would they be covered by some sort of agreements, rather than relying - award-reliant?

PN325

MR BUCHANAN: We don't know.

PN326

PRESIDENT LEARY: You don't know.

PN327

MR BUCHANAN: We don't know, President.

PN328

PRESIDENT LEARY: No.

PN329

MR BUCHANAN: I think that, you know, if you were making the assumption, you would probably assume that would be the case, but we don't know. I am not aware of any data that would give us the answer to that.

PN330

PRESIDENT LEARY: No, okay.

PN331

MR BUCHANAN: But I guess it sort of highlights I think the question of what happens if a percentage increase is granted.

PN332

PRESIDENT LEARY: Sure.

PN333

MR BUCHANAN: I now want to move to our position on the claim, and I guess from our point of view, we would urge the Commission that it needs to exercise some moderation. Certainly what we intend to argue is that the wages price index is not appropriate, and I will address that in a bit more detail. We certainly want to look at the CPI. And I guess not surprisingly in these matters, our view of the world is that the application of the CPI would be a reasonable increase. By my calculations, that would amount to a flat \$10.60 per week.

PN334

As far as this question of - which I think is fundamental to this whole claim: why not use the wage price index? I guess what we would say is a number of points, and I take some of these from the submission of ACCI to the Fair Pay Commission hearing. What we expect of the minimum wages system and anybody charged with reviewing and setting the minimum wages, is that minimum wages would support more bargaining. And that is my point earlier on about the structural efficiency principle of 89. I thought that was the system that we are heading towards. Employers are well aware - - -

PN335

PRESIDENT LEARY: Well, I think it is the system, but you can't compel people.

PN336

MR BUCHANAN: No, you can't, but I guess if you go, and this is the point, President: if you award significant increases - and let us be clear what we are talking about: at 4.5 per cent, we are talking about 2.4 per cent above CPI. Now, in my heyday of the mid-'70s to the late '80s, we would have loved to have got CPI as I recall it. That was considered a good outcome. Yet now, we are arguing that CPI, from our point of view, would be the right outcome, but the claim before you, and let us be candid, if you adopt the same

methodologies as you did last year, you are going to deliver a very significant increase, even if it was a flat increase, and I will talk about that shortly.

PN337

COMMISSIONER ABEY: Mr Buchanan, if I were to agree with you, and I do, that the system is fundamentally based on bargaining, would you acknowledge that there are a number of employees, and we can debate the number, for which the concept of bargaining is fantasy land, because of the position that they find themselves in the employment market, that there is just no prospect of realistically bargaining, either collectively or individually, with their employer, and as a consequence they are entirely award-reliant?

PN338

MR BUCHANAN: I think your point has got some validity, and I am a realist, and yes, obviously there will be some people in that category. But I think whilst we continue down the path of making it easy for people, and I mean not just employees, and employers, not to bargain, then we are going to perpetuate the problem. I think they can bargain. I think - my purist view of the world is that everybody can bargain, particularly in the current economic environment where unemployment is falling to levels that we haven't seen certainly since I left school, which was the early '70s.

PN339

This is the sort of labour market that we saw in those times. So I think employees can bargain, but, and I guess this is the whole point of our submission, we have to make sure that decisions that come from tribunals like this don't create the disincentive. And I am sure that is an argument you have heard before, and I heard Mr Cocker say - - -

PN340

COMMISSIONER ABEY: Indeed, it is an argument that I have run before.

PN341

MR BUCHANAN: Perhaps I should have researched in more detail, Mr Commissioner. But I guess what we would say is: a significant real wage increase, which is what this is about, being delivered automatically without any need to improve productivity or efficiency, is going to necessarily have a number of effects on bargaining. And I will just categorise this. And again, I am drawing on the ACCI submissions so it is not original work, I have to concede. Free-riding: and the points are: why would an employee choose to participate in bargaining potentially to have to negotiate and trade off, when they can secure major increases more frequently perhaps for doing nothing?

PN342

High minimum wage increases create incentives to remain on minimum wages. Now, I have heard the arguments and I have seen it in past decisions, well, this isn't proven. Well, I think common sense tells you: why would I bargain? Why would I bargain if I could sit back and get a 4.5 per cent increase? I think it is an astonishing - and this is the trap that I think the system is finding itself in. I think back to my Cadbury Schweppes days, where we bargained very long and very hard, yet I think - I can't remember an increase certainly in the last 10 years that was above 4 per cent per annum.

Yet here we are saying, if this is granted there will be a four-and-a-half per cent increase for not bargaining.

PN343

COMMISSIONER ABEY: Did the politicians bargain for their latest increase?

PN344

MR BUCHANAN: Probably bargained very hard, Mr Commissioner.

PN345

PRESIDENT LEARY: And what were their productivity increases or trade offs?

PN346

MR BUCHANAN: Well, I am not here to defend the politicians, President.

PN347

PRESIDENT LEARY: No.

PN348

MR BUCHANAN: But I must say - - -

PN349

PRESIDENT LEARY: I was just interested.

PN350

MR BUCHANAN: - - - I was under the impression that they had actually set up a fairly robust process to have these matters determined.

PN351

PRESIDENT LEARY: And independent tribunal.

PN352

MR BUCHANAN: Apparently they did.

PN353

PRESIDENT LEARY: Yes, that would determine their wages and conditions. Strange, that. Good enough for some, but not good enough for others maybe.

PN354

MR BUCHANAN: Now, President - - -

PN355

PRESIDENT LEARY: Let us not get into that debate, otherwise we are going to be here all day, and I don't want to be here all day.

PN356

MR BUCHANAN: Suffice to say, President, I must say, when I heard that particular report - - -

PN357

PRESIDENT LEARY: Timing was pretty lousy.

PN358

MR BUCHANAN: - - - yesterday, I did wish it had come in a bit later in the week, but yes.

PN359

PRESIDENT LEARY: We won't hold you personally responsible, it is all right.

PN360

MR BUCHANAN: Thank goodness for that. The second point on this one is the reduced scope to bargain is the way we have categorised it.

PN361

DEPUTY PRESIDENT SHELLEY: Mr Buchanan, is there any evidence that lowering the minimum wage increases bargaining? You say that people say there is no evidence that increasing it has any effect on bargaining, well, is there any evidence that decreasing it would have the - that the extent of the increase would have any effect on bargaining?

PN362

MR BUCHANAN: I haven't seen any, Commissioner, and I think you - there is a point, I mean this is about a safety net adjustment where we clearly have to come to a point that we are trying to look after those who aren't bargaining. My point is not that people should not get an increase - and I will address that in the closing remarks as to what some of the options might be - my point is that 4.5 per cent - - -

PN363

PRESIDENT LEARY: Is that the quantum of the increase?

PN364

MR BUCHANAN: - - - or the extrapolation of that into a flat rate, which I think is probably a more likely outcome, is just too much at this point, and that is our - the real strength of our position on this one. The reduced scope to bargain is talking about employers. There is no incentive for them to bargain or innovate or to offer above award pay to attract employees even in a tightening market so they will sit back and wait. And it gets a two-way street, why would you bargain if you are an employer when you can say well this particular decision has come through.

PN365

PRESIDENT LEARY: Couldn't that argument also be run against the last decision of the Fair Pay Commission? The Federal Industrial Relations Commission had never granted an increase that high - and I would have been interested in the responses had it done so - but the AFP Fair Pay Commission decision was lauded as brilliant, genius, a whole range of things, but nobody said that that has been a deterrent to bargaining, so why is that the case here?

PN366

MR BUCHANAN: I think ACCI is saying it is a deterrent to bargaining in the submission to the - - -

PN367

PRESIDENT LEARY: They didn't say that about the last decision of the Fair Pay Commission though did they?

PN368

MR BUCHANAN: I can't remember what the public statements were. Funnily enough, Commissioner, I was actually with Peter Anderson from ACCI when that decision came through. I think we were at - he was speaking at a TCCI - - -

PN369

PRESIDENT LEARY: Did you pick him up off the floor?

PN370

MR BUCHANAN: Well, I was going to say he was at a TCCI safety conference and he had to leave to take the decision, and I will put it in these terms, the face was fairly long when he returned to the room.

PN371

PRESIDENT LEARY: I am sure it was.

PN372

MR BUCHANAN: So certainly I don't think he was lauding the decision as I recall it.

PN373

PRESIDENT LEARY: And the difficulty with all of these arguments is it is all done in a political climate that is pretty toxic.

PN374

MR BUCHANAN: That is true, look, I wouldn't argue with you there.

PN375

PRESIDENT LEARY: Yes.

PN376

MR BUCHANAN: Probably just one point I will add here - it is just an anecdote, but I guess it addresses one of these issues - if you award an increase it is going to apply to all sectors that rely on minimum wage and the base award rates. And I think that is inherently unfair. Again, when we talk about fairness there has got to be a balance. And just an anecdote just occurred to me as we were here this morning. Yesterday I was in Scottsdale - doing some work for a small employer in Scottsdale - and as we were talking about a few things I said, "So what is the feeling in the town at the moment with the issues that have been going on?" And as he said, "My business has dropped 20 per cent." He was in retail. "It has dropped 20 per cent since all the Auspine things were discussed." Now, how do you say to a person like that you are now going to be faced with a 4.5 per cent increase on your wages bill?

PN377

PRESIDENT LEARY: You encourage him to bargain.

PN378

MR BUCHANAN: You encourage him to bargain, but you are encouraged to bargain if you actually keep the increase at a more moderate level. And that is our position, it is about moderation, not about denying an increase at this level. Another point I think needs to be made is just the potential for the flow of bargaining. A decision like this can quite easily impact upon those areas that are bargaining at the moment, and what we mean by that is the flow of argument can be disrupted by an unduly inflated wage increase, and just an example.

PN379

Consider a situation in which a proposed increase is on the table with two increases of 3 per cent over two years, not exactly an unusual scenario in the current time. The agreement contains trade offs and extra requirements of employees. Why would employees sign such an agreement if the free-riding non-agreement option provides wage increases of 4.5 per cent? And that is what we are faced with, that is where we are heading. How would an employer react to this? One option is to abandon bargaining, another is to relax the improvements the employer seeks, making the agreement a mere pay rise and therefore more likely to contribute to inflation.

PN380

PRESIDENT LEARY: Which is what a lot of bargaining is about these days anyway. The trade offs and the productivity and the flexibilities have all been done, and mostly it is now just an argument about quantum, certainly from my experience.

PN381

MR BUCHANAN: Look, I - - -

PN382

PRESIDENT LEARY: It is not a cynical review, that comment.

PN383

MR BUCHANAN: No, I take your point President, and look there is no doubt, I mean if we go back, when was - if I use one of those delightful bits of vernacular at the moment, the low-hanging fruit was found probably if not in the nineties it was there in the second-tier decision at the outset, so we do go back a fair way on that. But I think, if you are right, those direct sort of trade offs probably aren't there in a lot of workplaces, particularly the big ones who have been bargaining for a long time. But I think if I draw on an example of my Cadbury Schweppes days, yes we had reached a point where we weren't trading things off but there were still work-practice issues that were forming the basis of some pretty robust negotiation as the place went forward. There were also issues that - just generally about the productivity of the organisation, technology changes. So I think we were bargaining in good faith. This was an organisation in reality tht had been bargaining since about 1979.

PN384

PRESIDENT LEARY: Some people have been bargaining since 1904.

PN385

MR BUCHANAN: Probably have, President.

PN386

PRESIDENT LEARY: Yes.

PN387

MR BUCHANAN: It always - - -

PN388

PRESIDENT LEARY: Not the same people, but the practice has been around.

PN389

MR BUCHANAN: I mean I am dwelling too much in the - I know I am dwelling too much in the past today but it was always of some interest to me when I first joined Cadbury Schweppes and found that when we were arguing about wage freezes in 1981 as I recall, or 1980, Cadbury's was applying for CPI for its employees at that time, don't think they told the Commissioner the date.

PN390

I guess the other point on this one about how - the employer's reaction. One of the reactions could be to pay more for the improvements, so instead of the 3 per cent and 3 per cent increase suddenly they will be looking to pay 4.5 then 4.5, perhaps 5 and 5. Again decrease in the pay off of productivity turns and potentially leading to inflation. Members of the Bench, the most interesting document I found on the research I did on this case is the one I am about to tender to you, and I really think this is probably where we start to get to the heart of the matter as to what should be the quantum of increase.

PN391

PRESIDENT LEARY: Yes, I mark it R6.

EXHIBIT #R6 TRENDS IN ENTERPRISE BARGAINING DOCUMENT PRODUCED BY DEWR

PN392

MR BUCHANAN: Members of the Bench this particular document has been produced by the Australian Government through DEWR, and what it is looking at are the trends in enterprise bargaining at a Federal level. So basically they are taking all the agreements that are being lodged and looking at what sort of outcomes they are awarding.

PN393

PRESIDENT LEARY: They are fortunate they have obviously been able to access agreements lodged with the OEA whereas nobody else has been able to, so we have to accept the figures as being correct I presume.

PN394

DEPUTY PRESIDENT SHELLEY: Yes. So what sort of agreements? Is that all AWAs and collective agreement?

PN395

MR BUCHANAN: It is both, that is correct, Commissioner.

PN396

DEPUTY PRESIDENT SHELLEY: Okay.

PN397

MR BUCHANAN: So you will see from these particular numbers, from the front page the average annualised wage increase - and we are talking here of those agreements that were lodged in the March quarter. There is quite a bit of data here but it can be a little bit confusing as I found, but significantly if you look on the front page, what does it say about the private sector for the March quarter 2007? Well, the average increase per employee was 3.5 per cent of agreements lodged. That is a long way short of Mr Cocker's 4.5 per cent. It is down from 3.7 in the previous quarter.

PN398

I think it is a very significant number. I mean it is telling us that people in our community are lodging agreements which on average produce an outcome of 3.5. I have to confess, Members of Bench, I mean I am a simple soul and I will acknowledge that, what these numbers cause me to reflect on is where do the wages price index numbers come from? Who are these people who are getting the four-and-a-half per cent increase on average? I would actually like someone to explain it to me. I actually went on the website and had a good look at the wages price index and tried to understand it, but it seems clear to me that there was a very significant disparity between what is being reported there and what we are seeing in wage agreements lodged in the Federal area.

PN399

DEPUTY PRESIDENT SHELLEY: Maybe these figures are wrong in R6.

PN400

MR BUCHANAN: Well, I would have thought they would have to be real, Commissioner. I can't see that the increases are wrong at all. I particularly draw your attention to the two - - -

PN401

COMMISSIONER ABEY: Yes, go on Mr Buchanan, I will hold my question for the moment.

PN402

MR BUCHANAN: I think table 4 is quite interesting. It is the last, second-last and the third-last pages of the exhibit.

PN403

COMMISSIONER ABEY: Table 4, yes.

PN404

MR BUCHANAN: They are very complicated tables and I am starting to wish I had actually brought my reading glasses, but again it is a function of age I think. If you look in the final column of table 4 what you are seeing then is by industry classification codes for industries the sort of outcomes that make up that breakdown of three-and-a-half per cent. And I will just read a few

numbers out of that, so the percentage at all times is the middle number in each set of rows. Retail trade, third from the bottom, average increase 3.3 per cent.

PN405

Numbers of agreements lodged, 133 in March, not insignificant yet, people would say this is an area that probably there is not a lot of bargaining ability, yet something has been bargaining, 3.3. Accommodation, cafes and restaurants, 2.6 per cent, probably does reflect the fact that they are not in as strong a bargaining position but this is reality, this is what is happening out there. If I turn the page, fourth from the bottom, health and community services, a very significant part of our economy, 2.8 per cent. So as I said, Members of the Bench, I think these are really significant numbers.

PN406

PRESIDENT LEARY: The figures also confirm how disingenuous the public debate happens to be, doesn't it?

PN407

MR BUCHANAN: I am not sure I follow you.

PN408

PRESIDENT LEARY: Well, we are told that under the system wages are booming, everybody is getting fabulous increases and it is all a wonderful picture; these figures don't show that.

PN409

MR BUCHANAN: No, I don't think they do.

PN410

PRESIDENT LEARY: They do in certain sectors.

PN411

MR BUCHANAN: They do in certain sectors.

PN412

PRESIDENT LEARY: But collectively we are told that under that name you are not allowed to say any longer that everybody is getting wage increases and that it is all working very well, but these figures don't seem to indicate that.

PN413

MR BUCHANAN: Well, they don't, I thought we were in a Harry Potter movie for a minute, President, is you are not allowed to say names. But yes, I think you are right, I think that is unarguable, but I think it does support our proposition to you that four and a half is way too high.

PN414

PRESIDENT LEARY: It varies from industry to industry basically.

PN415

MR BUCHANAN: Sorry, President?

PN416

PRESIDENT LEARY: It varies from industry to industry.

PN417

MR BUCHANAN: It certainly does.

PN418

PRESIDENT LEARY: Yes.

PN419

MR BUCHANAN: But I think the point is that not only was the average 3.5 per cent but in particular industry sectors it is significantly below that. How do you go to those industries and say, "Sorry, if you had stayed out of it you could have got a better increase by not bargaining," and I think that is the dilemma we have got at the moment.

PN420

COMMISSIONER ABEY: Mr Buchanan, it is often suggested that categories such as accommodation, cafes and restaurants are the sort of category that are largely award reliant and would benefit, if I can use that term, from a decision from a tribunal such as this. Given that last year we granted - this Commission granted an increase of some 4 per cent and the Fair Pay Commission was higher than that, can you offer any observations on the employment outcome, which over the past twelve months in that particular category has been the star performer in the Tasmanian economy, it has increased by about 25 per cent from 11.1 thousand to 14.3?

PN421

MR BUCHANAN: I can't - sorry, I am not sure I follow you, Commissioner?

PN422

COMMISSIONER ABEY: Well, if it is suggested that wage increases of the order of 4 per cent etcetera, etcetera, are a disincentive to bargain and a disincentive to employ, that has been the order of wage increases over the past 12 months, yet despite that in an economy where the total employment growth has been about 1700, almost double that has been in this particular category of accommodation, restaurants and cafes in Tasmania. It seems to me that that suggests that there are other factors at work.

PN423

MR BUCHANAN: There could be many factors. I note from my own experience, we certainly write plenty of AWAs in that industry. And I am not saying what is right or wrong here, the point that I am putting to you is that in fact that increases are much lower than what is being claimed, and when we talk about equity we have got to take a wide view of equity. And as I said, I have read the arguments before, I have seen them being put, and I take Mr Cocker's point. I couldn't find any economic arguments that supported the proposition that pay increases lead to loss of jobs, that is the orthodox thinking, we don't resile from that. If I had found a good economic argument I would have put it to you today, and as I said, we don't resile from that position, but until somebody can make that argument - obviously there is a point where they are going to make a big difference - but until somebody can make that argument I don't think it is worthwhile continuing to put that in any great detail to you.

PN424

COMMISSIONER ABEY: Thank you.

PN425

MR BUCHANAN: Members of the Bench, I wanted to now look at just some of the other decisions that are relevant to this. Now, as I have said earlier certainly we would argue that the Australian Fair Pay Commission is a very significant body that should be taken into account in the deliberations today. I have got an exhibit perhaps to just illustrate some of my points.

MOBILE PHONE RINGING

PN426

PRESIDENT LEARY: We are trying to ignore that in case you hadn't noticed.

PN427

MR BUCHANAN: It is not me, President. Now, effectively what I would argue, and I will speak to the table shortly, is that the Fair Pay Commission decision, for all that it sounded a lot, I believe was effectively CPI only. At best I think it could be argued it was a little bit above CPI, and what I put in the particular table there you can see, is that the movements in the CPI from the March 2005 quarter to the September 2006 quarter, which is before the decision came out. Now, I concede arguably should the March 2005 number be in there or not? I just find it interesting that if you put it in there and you total up the percentage - those percentage increases in the CPI you come up with a number of 5.7 per cent.

PN428

And interestingly the actual increase in the Federal minimum wage was 5.65 per cent in percentage terms, so there seems to be a correlation. Even if you drop it out - and I then think it is unarguable that the other increases on that table were taken into account - you come up with a number of about 5.1 per cent, by my quick subtraction, which again is not terribly short of what the Fair Pay Commission awarded. So what is my point? My point is this, I think the Fair Pay Commission effectively is looking at CPI. And as you will note on the table below that, as I eluded to earlier, the CPI at a Federal level has actually decreased since the first decision. So we have actually seen a .3 of a per cent decrease in the CPI. I think that is what we call the banana impact wasn't it, that bananas and - - -

PN429

PRESIDENT LEARY: Banana and petrol wasn't it?

PN430

MR BUCHANAN: Banana and petrol, and I do point out for Mr Cocker's sake I did note that petrol is down a lot in the last couple of days again, so whilst it is up it is also down pretty regularly as well. So CPI is down. If you take my argument - and CPI has actually been a big factor in their figuring, and they don't make it clear in their decision, they certainly make reference to it but they don't spell - - -

PN431

PRESIDENT LEARY: They are going to an awful lot of trouble if all they do is apply the CPI.

PN432

DEPUTY PRESIDENT SHELLEY: Yes, abolish them altogether, just do the maths.

PN433

MR BUCHANAN: I suspect they would argue, President, that they do factor into a number of other considerations.

PN434

PRESIDENT LEARY: And then decide that CPI is the way to go anyway.

PN435

MR BUCHANAN: I thought I was the cynic here, President. Look, I don't know if I am right but I think it is again alluding to that point that we have got to be very careful and moderate in any increase that comes out of this Commission, and certainly I think we should wait, as I said earlier, for the Fair Pay Commission decision. It was interesting, as I said, if you note in Professor's Harper's speech - if I have still got it here and I have got it right - I am not sure I did get that one right actually, President. No, I know what I was referring to, I was referring just to the quote of his speech of Tuesday which I alluded to earlier where Harper is quoted, and I am just reading from Workplace Express. I can tender it if you like, but it is just their report of it:

PN436

After a speech to the National Press Club in Canberra yesterday Harper also said new research and effective marginal tax rates for low-paid workers as a result of this year's budget changes could affect next month's minimum wage determination.

PN437

So we have that as a factor, we have a negative CPI as a factor, to me this points to a fairly moderate, at best, increase coming out of the Fair Pay Commission, only time will tell. I also want to look at, Members of the Bench, the WA decision, it has been referred to already today and on the face of it it looks a pretty good outcome for the unions. But again if we look at it WA, the often quoted boom State of our economy, CPI was 3.5 per cent, so the actual increase which was equal, as I recall, to 4.8 per cent - even though it was given in flat terms - the actual premium above CPI was 1.3 per cent.

PN438

Now, contrast that to the Tasmanian situation where our CPI is running at 2.1 per cent. The claim from Unions Tasmania would give a premium of 2.5 per cent over the CPI. So effectively, Members of the Bench, if this was to be granted, in flat terms or in percentage terms, we would be giving Tasmanian workers a very significant premium over CPI compared to those in WA, which we hear is the boom economy. There has also been reference to the New South Wales decision, I am going to bow I am sure to the Commission's greater understanding of this than mine.

PN439

I have read the decision, I couldn't understand it, I don't quite understand the \$27 per week for their minimum wage, I can only presume that their minimum wage is actually lower than their award rates because they then went on to grant 20 at award rate, so I really don't understand it so I am not going to comment any further than that. I do want to comment though on the issue of the flat increase versus a percentage, I think that does need some comment today. Certainly, from our point of view, a flat wage increase is preferable than a percentage one. It is an argument that has been run and commented on. It was commented on in last year's decision by this Commission. It has been commented on in a number of jurisdictions over recent years, and I note in the New South Wales decision they did talk about this concerns about compression of relativities, and I think that is a fair concern.

PN440

PRESIDENT LEARY: It has been a discussion that has been ongoing for many years.

PN441

MR BUCHANAN: I gathered that in my period of asleep or whatever it was throughout the '90s at Cadbury's, but I did note that decision, that it certainly got a running quite regularly. And all we would say on this one is clearly our position, whatever you decide, is that a flat increase is to be preferred. I don't think this case is the time to be making arguments about compression of relativities and what we should do with it. Our industrial relations system is in a state of change, it could be in even greater change after the election as I am sure my colleagues on the right of me would agree entirely.

PN442

PRESIDENT LEARY: Do you read change as confusion?

PN443

MR BUCHANAN: Could cause confusion, but I think we are in a situation where I expect one way or the other our systems are going to be clarified and I think we will come out with some clear understanding of where we are heading over the next 12 months.

PN444

PRESIDENT LEARY: That would be nice.

PN445

MR BUCHANAN: So all we say on it is that on this particular occasion you should maintain your traditional position and award a flat increase. So what should it be? Now, we don't resile from our view that CPI, which is 2.1 per cent - and if I could quickly find my calculations, I think from memory that was about \$10.65, or perhaps I might be wrong there.

PN446

MR EVANS: 10.60 you said.

PN447

MR BUCHANAN: 10.60. We don't resile from that, that we think that is the correct point of view. I am also a realist, Members of the Bench, that would be a fairly significant decision if you made that. I am not going to put up any other number, but I am going to make some suggestions. At the very uppermost of your calculations I think should be the three-and-a-half per cent that was in the DEWR surveys. If you awarded that much, you are going to disadvantage some industry sectors who have settled by agreement for less. So three-and-a-half should be the very uppermost limit of your decision, and by my calculation that is \$17.65 per week. It is still a very reasonable increase, I would have thought.

PN448

Can't say much more than that. We would say it should be somewhere between the two at best. We would certainly urge you to take into account factors such as WA, where the premium over CPI was 1.3 per cent. If you applied that principle to Tasmania the premium over CPI would in fact be - or the increase would actually come in at 3.4 per cent. So I put those on the table and I put them in food-for-thought category, we don't resile from our traditional position that CPI is the correct increase, but certainly from our point of view any outcome up to about 3.5 per cent, the \$17.65 flat, would be seen as a positive outcome, with the one rider, and that is what the Fair Pay Commission decides because I think that does need to be taken into account.

PN449

PRESIDENT LEARY: What if the Fair Pay Commission came out with a decision similar to what they did last time?

PN450

MR BUCHANAN: Well, that is the risk that is there for all of us and in my

PN451

PRESIDENT LEARY: You would support that being flowed on then, would you?

PN452

MR BUCHANAN: And certainly in my submission to you, as I have said, whatever that decision, I think the opportunity should be given for us to either address you directly or certainly by submissions in writing as to how we see the impact. And it may be that it may come out in that sort of order of \$14, as I have heard, and not be hugely significant, but it may be. It has to be taken into account. I mean, I am not going to argue - be silly enough to argue at the moment and say, "Well, if the Fair Pay Commission awarded another \$27.30 you should only award Tasmanian - people in the Tasmanian system \$10.60." I would be fairly - I would be a great optimist to think that the Commission would do that, so - but I think it needs to be addressed hence my original submission.

PN453

So, in summary, Members of the Bench, our position is this: our wage fixing system, certainly since 1989, I thought was based on encouraging employers

and their employees to bargain and we would argue that State Wage Commission must reinforce that axiom and it must not undermine it. To grant the Unions Tasmania claim - even if it is a flat rate, will undermine that base. The State wage case should be about a fair safety net to ensure that employees who choose not to bargain do not suffer a loss in living standard, but it shouldn't be about lifting their living standard. The issue of equity for the lower paid is a complex issue that needs to take into account the tax and social welfare systems and the differing categories of the lower paid.

PN454

Any increase that is awarded must be a flat rate. As far as the wages price index goes, I think it is a poorly understood index and if it is used as the basis for this increase it will deliver an increase significantly above average community increases, particularly against the trend of bargain increases in the Federal system. That is those March quarter numbers I put to you. And finally, just to reiterate, the Unions Tasmania claim, if it is granted, will deliver a 2.4 per cent premium over CPI. And that is a significantly higher premium over CPI than the West Australian decision. So taking all those factors into account, we certainly urge you not to grant the claim in its form that has been put and to arrive at something somewhat less. If the Commission pleases.

PN455

PRESIDENT LEARY: Can I just ask you, do you have a position on the meal allowance claim?

PN456

MR BUCHANAN: On the meal allowance claim I am going to take it on trust because I do trust Mr Cocker, that is applying traditional formula, I haven't actually seen it, but if - - -

PN457

PRESIDENT LEARY: So on the basis that the usual - - -

PN458

MR BUCHANAN: - - - if on that basis, I - we have no problem.

PN459

PRESIDENT LEARY: Okay, thanks.

PN460

MR BUCHANAN: Sorry, the other issue I should have addressed, of course, was operative day. Traditionally it is 1 August. We so no reason to depart from that.

PN461

PRESIDENT LEARY: Okay. Thanks, Mr Buchanan. Mr Evans?

PN462

MR EVANS: Thank you, Madam President, and with the members of the bench's indulgence I might just grab this lectern to make life a little bit more comfortable for a while.

PN463

PRESIDENT LEARY: Does that mean you are going to talk for a long time?

PN464

MR EVANS: I will try not to be - - -

PN465

PRESIDENT LEARY: No, the reason I am asking is I just wondered whether anybody wants to have a short break because we have been going for a couple of hours?

PN466

MR EVANS: Well, even though I am on my feet I, for one, wouldn't mind a quick five-minute break.

PN467

PRESIDENT LEARY: All right. Well, perhaps we will have a five-minute break and we will come back all refreshed. Thank you.

SHORT ADJOURNMENT

[12.00pm]

RESUMED

[12.13pm]

PN468

PRESIDENT LEARY: Thank you, Mr Evans.

PN469

MR EVANS: Thank you, Madam President. Thank you for granting me that short break. It is the Tasmanian Government's position that an increase of \$20 to all Tasmanian private sector awards of the Commission and a similar adjustment to the Tasmanian minimum wage, pursuant to sections 35(1)(b) and 47AB of the Industrial Relations Act, is appropriate and will provide a fair and effective safety net of minimum wages for all award-covered employees. It is also the Government's position that all work-related allowances should be increased by an amount of 3.35 per cent which represents the percentage adjustment of the \$20 increase at the tradespersons rate as expressed in the Metal and Engineering Industry Award.

PN470

In relation to meal allowances, I can advise the Commission that the Trades and Labour Council has provided the Government with a calculation sheet using the agreed formula based on the March quarter consumer price index, to adjust meal allowances and further advise that the Minister agrees with the TTLC submission.

PN471

PRESIDENT LEARY: Mr Cocker is going to provide us with that sometime.

PN472

MR COCKER: It will be this afternoon.

PN473

PRESIDENT LEARY: Okay, thanks.

PN474

MR EVANS: Well, I actually have a copy of it here if I can assist you in that regard, the sheet that you provided, is that - - -

PN475

PRESIDENT LEARY: That will do, thanks. Thanks, we will get a copy made and return this to you.

PN476

MR EVANS: Thank you. President and Members of the Bench, while not a factor that this Commission is required to take into account, the Government's position reflects the position that the Governments of Tasmania, Victoria, South Australia, West Australia, the Australian Capital Territory and the Northern Territory jointly put to the Australian Fair Pay Commission in March of this year. It was the joint Governments Commission - position rather - to the AFPC, as is the Tasmanian Government's position to this Commission now, that such an increase provides for a fair and effective safety net of minimum wages for award-reliant employees, and balances their needs to that of the broader economic environment and ensures that the needs of the most vulnerable are not left behind..

PN477

The Tasmanian Government's major concern, as has been submitted to this Commission many times before in State wage case proceedings, is to ensure equity for the low paid and for those employees who have been unable to gain increases by means other than award safety net variations, while giving appropriate consideration to economic considerations and the likely effect on employment. In the Government's view an increase of \$20 is reasonable, affordable and provides a fair outcome that balances the needs of both employers and employees.

PN478

It is the Government's view, supported I would say by any reasonable analysis of the effect of previous Commission decisions, that reasonable increases, and I don't think anyone here today has argued against this view, reasonable increases to award wages and to the minimum wage, and the Government maintains that an increase of \$20 is both reasonable and responsible, will not have a detrimental effect on either employment or individual businesses. The Government's position as it was in the 2006 State wage case is that a flat increase rather than a percentage increase as proposed by the Tasmanian Trades and Labour Council's application, is the most appropriate way of providing an equitable increase for the lower paid whilst maintaining an effective safety net for award reliant employees.

PN479

If I can remind the bench of a passage from the 2006 State wage case decision at paragraph 106 of that decision, which was matter T12395 of 2005, the Full Bench said:

PN480

We are of the view that a flat increase gives appropriate emphasis to the needs of the low paid with a lesser increase at the higher classification levels, thereby reducing the overall economic impact which would flow from a percentage increase.

PN481

Such a position is also consistent with recent decisions, as we have heard this morning, of the AIRC and is also consistent with the position put by the joint Governments to the AFPC. On the issue of flat increases resulting in a compression of wage relativities, the Government's view, as it was last year, is that that argument is one that should be determined separately from these proceedings. As far as the application date of any increase is concerned, the Government agrees with the Trades and Labour Council and the employers that the increase should take effect from the first full paid after 1 August 2007.

PN482

President, Members of the Bench, in relation to economic considerations I have several papers that I would like to table for your consideration. But firstly I would like to say that the Tasmanian economy continues to perform strongly and the outlook for the Tasmanian economy in 2007 and 2008 is positive. And I want to support that position and refer to several of the 2007 and 2008 budget papers. Firstly, I would like to tender - table a treasury document titled Delivering Our Plan, Shaping Our Future, Tasmanian Budget 07/08 at a glance.

PN483

PRESIDENT LEARY: Thank you, we will mark the first lot of documents Justice 1. Thank you.

EXHIBIT #JUSTICE 1 TREASURY DOCUMENT TITLED DELIVERING OUR PLAN, SHAPING OUR FUTURE, TASMANIAN BUDGET 07/08

PN484

MR EVANS: I would like to refer to and or quote several passages from that document. Firstly, I would like to quote a sentence from the treasurer's message. At paragraph 4 of his message, the treasurer says:

PN485

Today Tasmania's economy is strong and our State finances are rated AAA, Moody's Investor Services.

PN486

Members of the Bench, I think that that is well worth noting given that we haven't always been in that situation. The second statement, in my view particularly worthy of note, is found at the fifth dot point on page 1 where the treasurer lists as a highlight of the budget:

PN487

...strong economic growth including 6000 new jobs forecast over the next 12 months together with historically low unemployment and positive population growth.

PN488

Third, I would like to take you to page 5 of the document and highlight what can be regarded as key performance indicators for a strong and healthy economy. They are listed next to a series of graphs. Firstly, under the heading of Sustained Economic Growth. The document indicates that over the past five years Tasmania has been the third fastest growing state or territory with an average annual growth rate of 3.7 per cent versus 3.3 per cent nationally. And if I might make the point too, in relation to the economic data that I am speaking to and tendering, whilst Unions Tasmania tended to rely in a large part on national data, I certainly rely on data that is relevant to Tasmania. I believe that it is more relevant data in terms of this State wage case. Under that heading it goes on to say:

PN489

Only the resource rich states of Western Australia and Queensland have outperformed Tasmania. Continue strong growth is forecast for 2007, 2008.

PN490

Under the heading of Record Employment it talks about:

PN491

...around 30,000 jobs created since 1999. Record level of employment and a record low unemployment rate. Since 2002 - in April of 2002, again, only the resource rich states of Queensland and Western Australia have had faster growth employment. 6000 new jobs forecast in 2007, 2008.

PN492

It talks of record exports:

PN493

Exports from Tasmania are at a record level.

PN494

Record population, it talks about how population continues to grow since the nineties. President, Members of the Bench, I would also like to table chapter 2 from budget paper number 1.

PN495

PRESIDENT LEARY: I will mark that Justice 2.

PN496

MR EVANS: Sorry, I misled you slightly, it is chapter 1 from budget paper number 1. I will get to chapter 2 shortly.

EXHIBIT #JUSTICE 2 CHAPTER 1 FROM BUDGET PAPER NUMBER 1

PN497

MR EVANS: On the front page of the document it outlines several features. If I could take you to page 3 of the document - sorry, down the bottom, under the heading Economic Outlook, the passage that I would like to read into the transcript there under that heading says:

PN498

Economic conditions in Tasmania continue to be favourable. It is forecast that Tasmania's economy will grow by 3.5 per cent in real terms in '07, '08. The solid economic growth is expected to be sustained by continued growth in exports, consumer spending and investment, including several tourism and energy projects. The international and national environment in '07, '08 is likely to provide continued support for the Tasmanian economy whilst a return to higher levels of private investment in Tasmania is expected in '07, '08 driven in part by some major new investment projects. Based on year-to-year data treasury estimates that employment will increase by half a per cent in '06, '07 which follows very strong growth of 3.3 per cent in '05, '06. It is expected that employment growth will increase substantially in '07, '08 with forecast growth of two-and-a-quarter per cent and an additional 6000 jobs.

PN499

As was referred to previously:

PN500

The underlying economic fundamentals for both the national and the Tasmanian economies are considered to be robust.

PN501

The next document that I would like to tender is, in fact, chapter 2 of budget paper number 1.

PN502

PRESIDENT LEARY: We will mark that Justice 3.

EXHIBIT #JUSTICE 3 CHAPTER 2 OF BUDGET PAPER NUMBER 1

PN503

MR EVANS: Chapter 2 reiterates and expands on several of the points that I have already made in relation to economic growth and forecasts, but also provides data on a variety of other measures, including gross State product consumption, investment, overseas export activity, demographic trends, structural changes to the economy, productivity and, of course, labour force participation in employment and unemployment. I won't address in detail any of the aspects included in that document. For completeness, though, I simply

wanted to make it available to the Commission to ensure the Commission is apprised of all the information in relation to the state of the economy that is necessary for its considerations.

PN504

In the context of State wage case proceedings, of course, employment and unemployment levels are crucial to the bench's considerations and I would now like to deal with employment and unemployment levels and participation rates in greater detail. If I could table a document called Labour Force?

PN505

PRESIDENT LEARY: Thank you. We will mark that Justice 4.

EXHIBIT #JUSTICE 4 DOCUMENT TITLED LABOUR FORCE

PN506

MR EVANS: Now, this document is the Australian Bureau of Statistics labour force survey for May, catalogue number 6202.0. This was released on Thursday 7 June and supersedes and updates data included in budget information papers. For completeness I have tabled the entire document, however, page 14 is relevant to Tasmania and to the submissions that I make in relation to employment and unemployment. The statistical data provided by the ABS is arrived at using an improved method of estimation known as composite estimation which the ABS describes as being more efficient. The document provides data using both trend estimates and seasonally adjusted estimates.

PN507

I am advised by treasury that they believe that the trend estimates are the most reliable and in all modelling the Tasmanian treasury relies on trend analysis. But nonetheless the document does provide both trend and seasonally adjusted. In relation to the estimation methods, the ABS provides a brief overview of the new estimation method at page 3 of the document and there is also further detailed estimations from page 23. The key points for the later analysis are employment, unemployment, the unemployment rate and the participation rate. Now, as I said, the data relevant to Tasmania is on page 14 and if I could refer to the data that is on page 14 in relation to each of those key points for labour analysis and direct your attention to the trend analysis figures at the bottom of the page on the left-hand side and briefly talk to each of those key points.

PN508

Firstly, if you look at the second column it details total employment and you will see that Tasmanian employment increased by 600 in May 2007, to stand at 226,400 which is a record employment level and is 1700 above the same month for last year. Members of the Bench, I would argue that there is a strong underlying growth in Tasmania's level of employment and it has been evident since around about 2002. Since 2002 employment has risen by 28,900. The Government would argue that this level of employment growth is

actually faster than the national rate and as can be seen only Queensland and Western Australia have experienced faster growth over the same period.

PN509

Secondly, if I could take you to the third column which deals with total number of Tasmanians employed and as you can see the number of Tasmanians unemployed in May 2007 decreased by 500 from the previous month's level to 11,500. President and Members of the Bench, this is the lowest level of unemployment since October 1980. Third, if I could direct you to the fourth column, which deals with the current unemployment rate and that shows that Tasmania's unemployment rate decreased by .2 per cent to 4.8 per cent in May 2007 which, in fact, is the lowest rate recorded since the current labour force survey began in 1978. And it is also, Members of the Bench, the first time that unemployment has been below 5 per cent, which I think has also been noted here today.

PN510

And in case there is any debate about whether trend is better than seasonally adjusted, it is interesting to note that seasonally adjusted figures show that the unemployment rate is 4.4 per cent. As to why treasury regards the trend analysis to be more accurate, I am not an economist and I don't intend to advance theories as to exactly why that is the case. And the final column deals with the participation rate, that is the share of adult population who are either employed or looking for work and the figures show that Tasmanian's participation rate has remained steady at 60.1 per cent. President and Members of the Bench, section 36 of the Industrial Relations Act requires you to be satisfied that any increase awarded is consistent with the public interest and we have heard quite a lot about the public interest here today.

PN511

Section 36 requires you to consider the economic position of industry effected by a decision and the general effect on the economy of Tasmania. I would submit to you that the current strong economic performance of the State and the forecasted continued growth in the economy, as evidenced by my earlier submissions, satisfies considerations in this regard. The \$20 increase advocated on behalf of the Minister will not result, in our view, in an adverse economic outcome. You are also required to give particular reference to the level of employment. In this regard I submit that the evidence presented leaves no room for doubt that the current levels of employment and unemployment paint a very healthy economic picture and future forecasts are for this trend to continue.

PN512

And importantly, as I said earlier, reasonable increases to award wages and to the minimum wage will not have a detrimental effect on the level of employment. And indeed, on the contrary, we would argue that reasonable wages provide an incentive for people to seek and remain in employment. And finally, in relation to the last aspect of public interest considerations, the Commission is required to take into account any other matter that the Commission considers relevant and I would submit that the remaining significant and vital considerations for the Commission in consideration public

interest, is to consider the needs of those employees who are dependent on safety net increases, employees who aren't in a position to or have been unable to achieve an increase in wages over the last 12 months.

PN513

Mr Buchanan sought to have a definition of the low paid. Beyond using those words, I don't think that I could come up with a definition that is needed or necessary for the considerations of this Commission. The group that we generally categorise as low paid, they are, in my submission, the most vulnerable and not only are dependent on but are deserving of a \$20 increase.

PN514

Mr Buchanan indicated a couple of things that I would like to comment on, firstly in relation to the deliberations of the Australian Fair Pay Commission. And he spoke of, and we will all ask questions - or Simon was, and Mr Buchanan was, of the disparity of Federal and State minimum wages. And I don't think that I can largely expand on the answer. It is clearly undesirable to have different Federal minimum wage and State minimum wages. But I can't see that it is avoidable.

PN515

It is simply something - a situation that we currently have. Unless the industrial relations landscape in Australia changes dramatically, as I said, it is unavoidable. And before you ask, I don't have a magic cure. But what I do know, and this Commission clearly stated in the wage case of 2006, and that is that the Tasmanian Industrial Commission is not bound by whatever the AFPC does, and that fact remains and - - -

PN516

PRESIDENT LEARY: Do you have a view in light of Mr Buchanan's submission that we await the outcome of the AFPC?

PN517

MR EVANS: No.

PN518

PRESIDENT LEARY: You don't think we should, or you do think we should, or you just don't have a view?

PN519

MR EVANS: No, I don't think we should. I will answer your question again: No, I don't think you should await the outcome of the AFPC. As I said, the Commission is not bound to. And I think the reasons provided in the decision of 2006 adequately answer the reasons why you shouldn't wait. Mr Buchanan also spoke about awarding an increase being a deterrent to bargaining, and that everyone has the capacity to bargain. I am afraid I can't agree. Everyone doesn't have the capacity to bargain. The reason we do have this safety net increase is to provide that protection for employees who can't.

PN520

And notwithstanding any data that is provided from DEWR or Mr Buchanan's submissions, there are people who simply can't, don't want to, or aren't allowed to bargain. And those people only achieve increases by way of safety net

increases through the State wage case. I guess the only other thing I would like to comment on in relation to - I have rushed through, being conscious of the time. But I don't think I could let it go without commenting on the data that Mr Buchanan provided, that he sourced from DEWR, which I found very interesting.

PN521

PRESIDENT LEARY: Yes, didn't we all?

PN522

DEPUTY PRESIDENT SHELLEY: Yes.

PN523

PRESIDENT LEARY: Yes, indeed.

PN524

MR EVANS: I must admit, I didn't know that such information existed. But Mr Buchanan indicated that it is a significant number, in terms of trends. If I was a cynic, I could also advance the argument that it is also perhaps significant in that it demonstrates the extent to which employees can be persuaded to accept certain outcomes. I don't know that it is a demonstration of willingness to bargain. I think it is more of a demonstration of the effect that WorkChoices is having on bargaining.

PN525

In concluding, Madam President and Members of the Bench, I note that the Trades and Labour Council Application has not sought to amend the wage-fixing principles, and seeks only to vary the principles to reflect any decision of the Commission, and I generally agree with that approach. As the Minister considers, at this point in time the wage-fixing principles are adequate and appropriate for the parties. However, I am aware that my colleague, Mr Baker, intends to make a submission in relation to an amendment relative to public sector awards.

PN526

My understanding of his submission is that the amendment that he seeks is to allow - adjust the wage-fixing principles to allow public sector awards to be brought up to date, and reflect various agreements between public sector parties. To the extent that I correctly understand Mr Baker's proposal, I can indicate to the Commission that the Minister certainly has no objection to that. If the Commission pleases.

PN527

PRESIDENT LEARY: All right. Thank you. Okay. Looking at the time, Mr Baker, we are happy to sit if you don't want to take too much time, or we are happy to break if you would rather come back after lunch.

PN528

MR BAKER: No, my submission is relatively brief, President, and should conclude 10 to, 5 to 1 I would think at the latest.

PN529

PRESIDENT LEARY: And then it is up to Mr Cocker with his response.

PN530

MR BAKER: Well, perhaps we can have Mr Cocker's response after lunch.

PN531

PRESIDENT LEARY: He can decide, subject to what you say perhaps. Sorry, we are still fascinated with the specifics of this exhibit.

PN532

MR BAKER: Perhaps he might need to give a further explanation.

PN533

PRESIDENT LEARY: I don't know whether we have that sort of time. All right. Thank you, Mr Baker.

PN534

MR BAKER: President and Members of the Bench, this matter arose as a result of other matters that were before the Commission, principally in matters T12870 and T12871 of 2007, which was an application by the Minister to vary public sector awards by the inclusion of a safety net adjustment, and secondly to undertake a review of public sector awards. On the - and to give us some context, I will read a letter that was sent to both the Tasmanian Chamber of Commerce and Industry, the Unions Tasmania and of course to yourself, President, on 6 June.

PN535

During proceedings pertaining to this matter, that is the wage-fixing principles today, it is the intention ...(reads)... private sector awards or employees generally, whose terms of employment are determined by them.

PN536

And then there was invitation for discussion. Like Mr Buchanan earlier this morning, I too went back and had a look at the way in which the wage-fixing principles had been determined by this Commission. And the first of the principles were established by this Commission way back in 1985, when they adopted the then principles as amended by the - or adopted by the Australian Industrial Relations Commission. And the then president - - -

PN537

PRESIDENT LEARY: I think back then it was the Australian Conciliation and Arbitration Commission. I don't want to be picky, but - - -

PN538

MR BAKER: You are quite correct, President. And President Koerbin indicated they would be adopted mutatis mutandis, which I understand is Latin for Tasmanianising the principles, but however - and they remained in that manner until, as again Mr Buchanan noted, the structural efficiency principle of '88. And again, the principles were amended in '93 and by '95 by this Commission. But in the meantime, the Industrial Relations Act, as it was then known, was amended by the Brereton amendments of '93, that included the provision of a safety net.

PN539

Now, that safety net - well, the reference to the safety net was further enhanced by the Reith amendments to the Workplace - well, what became the Workplace Relations Act in 1996. And we have maintained those principles by and large since then, up until the change which occurred in March of 2006, which saw the WorkChoice amendments made to the Act which removed national wage cases. And the vesting of wage-setting issues was transferred from the AIRC to the Australian Fair Pay Commission.

PN540

So today, the Federal minimum wage, the award minimum classification rates, are set by the Australian Fair Pay Commission. And hence, the wage-fixing principles of the Federal Commission have been consigned to history. As has been noted by my colleague, Mr Evans, at the 2006 State minimum wage case, the Government argued strongly at the time that the principles - the wage-fixing principles should be continued, and indeed the bench saw fit to continue them.

PN541

Whether those principles remain relevant in the context of wage-fixing parameters as we know them today is a debate which I am sure we will all have at some stage in the near future. What we are seeking to do today is to seek a variation to those principles in the manner which I will now outline. Currently, the employer, that is the Tasmanian Government, is engaged in an exercise to review classification standards and structures, and for - sorry, that is to review wage classification standards and structures, and to develop a new contemporary model to replace the old.

PN542

It is being oversigned by my office, in conjunction with the State service agencies and the relevant trade unions. It is an exercise that involves around some 13,000 employees in State service, or some 46 per cent of it. An industrial agreement awaiting signature, reflecting the terms of this, will be filed with this Commission. Our aim is to develop a new, contemporary model of classification standards and structures that reflect a modern State service employment model. It is our view that this exercise cannot stand alone.

PN543

Our very strong view is that the modern classification standards and structures is but half of the equation. The other half is the terms of employment that make up the employment package for State service employees. Today, there is in excess of some 50 enterprise/industrial agreements, and some two dozen plus awards, that have application to the employees in question. Our quest is to reduce both the award and agreement coverage into a single, consolidated award document, if possible. And I acknowledge that that may well not be possible.

PN544

PRESIDENT LEARY: You have got to aim high.

PN545

MR BAKER: Well, that is correct, President - a document that reflects contemporary terms of employment with contemporary classification standards and structures. Under the current wage-fixing principles, that quest is not possible. It may well be argued that our quest can be satisfied by the creation of an all-encompassing industrial agreement. However, an agreement is an agreement, and an agreement has a finite life, however it is described. We seek certainty of outcome, certainty that an award, comprehensive in its terms, will provide to employees and the employer alike.

PN546

As I indicated earlier, the safety net adjustment was adopted by this Commission in 1995. However, the State service had already commenced a process of industrial agreements, including a principal agreement that grew out of the structure efficiency principle in the late 1980s. That agreement is now 19 years old and ageing. And in addition as I indicated before, Commissioner - President and Members of the Bench, there are a range of agreements and awards that have grown up higgledy-piggledy, and have all sorts of connotations and relevance to the parties some years later - or a lack of relevance to the parties some years later.

PN547

As I have indicated, the parties have commenced a review of awards under the auspices of this Commission in matter T12871. But fundamental to that review, that is hand-in-glove, is a requirement to review and rationalise the industrial agreements that pertain to them. Therefore, if you rationalise the agreements, rationalise the awards that underpin them and the content contained therein, a mechanism is necessary to enable the parties to those awards and agreements to place the content into a prescriptive format, providing security of outcome.

PN548

We contend that such security of outcome may be achieved by consolidation of wages and conditions into a single award document that would have application of up to 13,000 employees. I pose the question whether the Commission can amend its principles in the manner sought. And I would read a short synopsis of the review of the wage-fixing principles of July 2000. And it is reported in the Australian Labour Law Reporter, reference 27-165:

PN549

The Commission followed up on its proposal made during the 1999 State wage case for full review of ...(reads)... case to case. The Tasmanian Commission considered that it should adopt a similar approach.

PN550

I would note the following from the synopsis:

PN551

Amended as necessary to reflect a distinctly Tasmanian context, whilst being at the same time broadly consistent with national guidelines.

PN552

Today, there are no national guidelines. The national wage-fixing principles are a thing of the past. Wage-fixing principles adopted by this Commission are in its principles to apply it in a manner in which it determines, having regard to the views expressed by the parties, and to its observations as noted in the July of 2000 decision in respect of the wage-fixing principles. In doing so, I also note the use of the expression "a contemporary look". It was a comment used by the then secretary of the Tasmanian Trades and Labour Council when addressing the relevance of the wage-fixing principles in those proceedings.

PN553

That is today what this employer is seeking to do in its application to vary the wage-fixing principles: "a contemporary look". The commentary also notes awards of the Federal Commission cover a substantial majority of Tasmanian employees. The introduction of the WorkChoice amendments is no longer substantial but overwhelmingly the case in the private sector. Therefore, I would submit that this Commission is further at liberty to amend the wage-fixing principles in the manner sought.

PN554

Indeed, as the percentage of the private sector workforce covered by State regulation has decreased, the percentage of the public sector workforce has grown substantially. Indeed, today the composition of the workforce covered by industrial regulations determined by this Commission is now overwhelmingly private sector employees. In support of this, a further 10,000 employees since July 2006 now have their wage rates and conditions of employment regulated by awards or agreements of this Commission.

PN555

In fact, some 28,000 public sector employees are now subject to awards and agreements of this Commission. The Tasmanian Government is the single largest employer within the Industrial Relations Act framework, but we are a discrete employer. That leads me to my next point: the last sentence in the quote says in part:

PN556

It is important to ensure that any wage-fixing principles established pursuant to the Act do not prescribe procedures that limit the Commission's statutory obligations.

PN557

Section 19 of the Act:

PN558

The Commission is empowered to make, vary, rescind or correct an award.

PN559

Section 23 provides for the application of that award, and at section 36 it deals with the question of public interest. Our submission is that the alteration to the wage-fixing principles does not offend the Commission's statutory obligations in relation to sections 19, 23 and 36. What is proposed is a variation that will impact upon public sector awards and agreements, whilst maintaining the

integrity of the primary position of the principles when addressing those relevant sections of the Act.

PN560

It provides no opportunity for a party to a public sector award to seek a variation to it, other than through the existing wage-fixing principles, which will continue to provide a consistency of outcome for all parties who appear before the Commission, either in the private or public sectors. However, the amendment is consistent with section 36, and if agreed by the Commission, would be consistent with earlier decisions in respect of the wage-fixing principles inasmuch as this Commission has evaluated the views of the parties in arriving at its determination.

PN561

I submit that the amendment is consistent with section 36, that is the public interest test, as on public sector wages and conditions of employment, other than the consolidation of them into effective award-relevant documents. I reiterate that there will be - it will provide for no increase in wages, no increase in conditions of employment, no impact in the wider Tasmanian community either financially or employment-wise. Therefore, we say that the public interest is met by varying the wage-fixing principles in the manner sought. And as a reflection of the desire of the parties to public sector awards, we will continue to embrace the relevance of the wage-fixing principles of this Commission until such time as their relevance dissipates.

PN562

PRESIDENT LEARY: So does the variation then mean that public sector awards become paid rates awards rather than safety-net awards; is that the intent, or is that something for another day?

PN563

MR BAKER: Well, I note earlier comments of this Commission say that this Commission has no authority to make paid rates awards. We would view them still as a minimum rates award.

PN564

PRESIDENT LEARY: Reflecting going rates?

PN565

MR BAKER: Reflecting going rates, yes, President.

PN566

MR BUCHANAN: Minimum paid.

PN567

PRESIDENT LEARY: All right. We will just change the words, is that what you are saying?

PN568

MR BAKER: Yes.

PN569

PRESIDENT LEARY: Yes, all right.

PN570

MR BAKER: But the important thing is that that would be an agreement by the parties. In the other circumstance, whether it be the employer or the employee organisation, if they sought to vary an award through arbitration, they would need to meet the test as prescribed by the principles.

PN571

PRESIDENT LEARY: Sure. Yes. No, I understand what you are saying. I just wanted to clarify it. What about the application that is before us today? The application by the Unions Tasmania only applies to private sector awards.

PN572

MR BAKER: Yes, I understand - - -

PN573

PRESIDENT LEARY: So I mean, the reason I am asking you is, we have spent quite some time bringing all of these awards up to date, and now we are at the last gasp. And the increases, if there are any, coming out of this don't apply to public sector awards?

PN574

MR BAKER: Well, it would be my view - - -

PN575

PRESIDENT LEARY: Or would it be intended that they do.

PN576

MR BAKER: Well, it would be my view that they ought to apply. And that was - given the nature of the submission I was making today, I was going to seek some clarification from the bench whether or not over lunch I ask Mr - - -

PN577

PRESIDENT LEARY: Cocker.

PN578

MR BAKER: - - - Cocker, thank you, to vary the - - -

PN579

PRESIDENT LEARY: To amend the application.

PN580

MR BAKER: - - - to amend the application to pick up all the public sector awards.

PN581

PRESIDENT LEARY: Yes, that is the point I am getting to, yes.

PN582

MR BAKER: Yes.

PN583

PRESIDENT LEARY: All right.

PN584

MR BAKER: Yes.

PN585

PRESIDENT LEARY: If you follow that up, we would be very grateful.

PN586

MR BAKER: Thank you.

PN587

PRESIDENT LEARY: All right. Is that all you want to put?

PN588

MR BAKER: Yes, thank you, President.

PN589

PRESIDENT LEARY: Okay. I guess we need to ask Mr Buchanan whether he wants to make any comment on the application to amend the principles, or do you want to reserve your position on that, presuming you were aware of the application?

PN590

MR BUCHANAN: President, I would reserve our position. I wasn't aware of it, and I do note from Mr Baker that it was sent to the TCCI, but it certainly didn't find its way to me with any instructions. So I can't comment.

PN591

PRESIDENT LEARY: Okay. All right. Look, could we ask you perhaps to have a look at it, noting that it only applies to public sector awards anyway, and come back to us within a pretty short period of time; is that possible?

PN592

MR BUCHANAN: Yes, I will do - I mean, prima facie, I can't see that we would have a problem with it, but I should look at it.

PN593

PRESIDENT LEARY: No, no. It is pretty specific as to what it is intended to do. Mr Cocker, would you like to adjourn and come back after lunch, or are you in a position to give us a brief submission in reply?

PN594

MR COCKER: Well, if the Commission pleases, I am happy to continue.

PN595

PRESIDENT LEARY: Are you? All right.

PN596

MR COCKER: It might even be appropriate to do this case on an empty stomach, President.

PN597

PRESIDENT LEARY: There is obviously some meaning in that. I will think about it. Just before you do that, during the proceedings we got a letter from the Civic Contractors Federation, saying that Mr Bachelor would be in attendance. He is not there anywhere, is he? Okay. I don't quite know what

to do about that. And I also should have advised you that the Association of Independent Schools said that they had no intention of making any submissions.

PN598

MR COCKER: Thank you, President. I guess there are some points that need to be addressed arising from submissions from my friend, Mr Buchanan, including his history lesson. But I would simply make the point that in 1989, I was a workplace delegate, and I was going to meetings and putting my hand up to support the ACTU and the Labor Government position that Australia should move into enterprise bargaining, and that a new system of flexibility and enterprise bargaining introduced into Australia.

PN599

And it may well be that the decisions that I and others were making at that time have created the prosperity we are arguing about today. But that is an argument for another place. I think Mr Buchanan asked the question: are we losing sight of the fact that the system is about bargaining? He asked a question about the role of the so-called Fair Pay Commission. He didn't go into an analysis of the economy. Our friend Mr Evans has done that very effectively.

PN600

To deal with those issues, the Fair Pay Commission, I heard that there is a decision nearly due, and I heard that there is potential for a little bit of confusion about decisions. But I didn't hear any arguing actually as to why the Fair Pay Commission wouldn't have any bearing on this decision, or why indeed we should actually wait for it.

PN601

PRESIDENT LEARY: Well, certainly we are not bound by statute to take it into account.

PN602

MR COCKER: Not bound by statute, and I would submit, Commissioner, given your - or given the Commission's decision last year that the considerations of the Fair Pay Commission are irrelevant to this particular decision. In fact I would go further. I would say that this decision is made under the State Act. The State Act, as I talked about, talks considerably about fairness and equity. The so-called Fair Pay Commission, the only time the word "fair" appears in any of the legislation associated with that Commission is in its title.

PN603

It is not required to have fairness and equity as part of its decision-making, and has a very different process and a very different role. Whether or not it arrives at the same conclusions, only time will tell. But we didn't come running back to this Commission in December asking for another \$7. We recognise that we have an annual system of putting these cases. We look at the issues that are relevant each year as it comes along. The Fair Pay Commission does its own thing, does it in secret. Its findings are not subject to review or any other process.

PN604

Why that decision and why the findings of that Commission are relevant, I don't think the case has been made. And I would say to wait for it is to serve no purpose. It would be a pleasant coincidence if we ended up with the same minimum wage in both jurisdictions, but I think that is unlikely. Maybe our friends would like to put in an extraordinary submission to bring those rates together at some time in the future, but I don't see it is relevant. I would like to address a couple of issues that have been raised. In exhibit R1, we were shown some hourly wage decile figures.

PN605

I am not exactly sure what that means. The information sources aren't revealed in the paper, but if this document is as simple as it looks and it is saying that we have managed to lift up the wages of the lowest paid in Australia through the processes of the prior use - and I note this only runs to 2004, and I think that is actually something to be proud of. And we would have no problem with that at all. To move on to the issue of the Department of Employment and Workplace Relations March Quarter Trends in Federal Enterprise Bargaining: this document lists, by some sort of industry categories, numbers of agreements struck and average wage rates that come out of those agreements.

PN606

This is a stand-alone document, and in terms of our debate, I think it has got several significant flaws, the first one of course being that we have no information as to what the base is that these rates are being applied to. It may well be that these 3.8 per cents and 4.2 per cents are actually following on from very significant rises, and are on much higher bases than we are dealing with here at the moment. I think it may also be reflective of the Federal system, and how the capacity to bargain has in fact been made difficult by giving the employers significant alternatives in dictating how these things should work.

PN607

And whether those rates actually mean anything in that sense is another question. I think the other significant issue with these rates is that as part of a certified agreement, they are but one of a number of issues that are being dealt with. And there is no information in this document to say what non-wage benefits or other improvements were made in the agreements that would in fact have a monetary value, whether there are allowances that have increased in this agreement, whether there is an increase in superannuation paid through these agreements, whether there is a reduction in working hours in these agreements.

PN608

There are any number of variables which could have a value attached to them not reflected in the straight-out wage. And in that sense, a finding of 4.2 per cent may turn into a finding of 8 per cent or 9 per cent or any other number when the entirety of the agreement is taken into account. And of course we can't do that with the information that is provided to us here. We saw again

the TCCI survey of expectations, a very, if I may say so, similar set of circumstances to last year.

PN609

The TCCI survey covers 127 businesses which employ 9878 persons, which is, on a quick calculation in my head, less than 5 per cent of the workforce at the moment, probably about 4 per cent of the workforce. So it actually covers less workers than it covered last year. I also note that this survey is most heavily weighted to manufacturing. 20 per cent of the respondents come from manufacturing, and given the state of manufacturing in this country it is no surprise that that lot is feeling a bit gloomy. But what we noted last year was very similar comments and very similar expectations as are reported in this document.

PN610

And of course, the reality was that last year turned out to be a whole heap happier than these people thought that it was going to. And we are going through the same again. I think when you compare that to the, as I did earlier, the census survey of small and medium business in Tasmania, that document is of May, and it says that business confidence in Tasmania is the second-highest of any State or Territory, that 74 per cent of businesses in May 2007 had confidence in their business prospects being positive for the next 12 months, as compared to 5 per cent being negative.

PN611

And I think, I might have said this last year, but I think that the only conclusion I can come to is that the chamber members are a gloomy lot. I would like to quickly turn back to the labour force document, and we had a look at page 14. There are a couple of issues that I think are particularly worthy of note arising from that. The first one I would note is that we have an unemployment pool of 11,500 people in Tasmania at the moment. The Government is forecasting that 6000 of those people are going to find employment in the next 12 months, which will leave us with an unemployment pool of 5000 people, or virtually negligible.

PN612

I struggle to see where these 6000 workers are going to come from. I further struggle to see where they are going to come from when we look at, as I mentioned earlier, the participation rates. The Tasmanian participation rate sits at 60.1. On the front page, we can see that the national participation rate is 64.9. That is, there are 4.8 per cent less Tasmanians aged 15 and over who choose to be in the workforce compared to the national figures. And I think we really have to ask why is that?

PN613

And I would suggest that perhaps one of the reasons is that the workforce is unattractive, is that the pay is not enough to make people want to go to work. And to argue that pay rates shouldn't be moved in the manner we suggested may well be the chamber cutting its own throat. I would also suggest that there is a very interesting question, as I have touched on before, in the female participation rate. It is set out here that the number has dropped over the last

12 months from a high of 54 point something or other - 54.8 down to 52.8, 2 per cent reduction in the number of females at work.

PN614

I did touch on this issue, but I think it is worthy of a little expansion. When we are talking about equity in a pay situation, the document that we tabled, the composition of the workforce, talks about the types of professions and occupations that are predominantly likely to be found in this minimum wage and award wage structure. And it is also I think convention or wisdom that these professions are dominated by part-time and casual work, and they are dominated by women.

PN615

And one would wonder, if it is not drawing too long a bow, to say that the wages that are on offer to women who make up this part of the workforce aren't attractive enough to bring them into the workforce. And again, is this a situation where the wage on offer is actually reducing the labour supply? The other issue of course with the labour supply is that we are constantly being told that there is a shortage of skills.

PN616

And again, the chamber has argued that we shouldn't adjust the skills rates in the awards, that we should have a flat rate apply across the award, which has the effect of making the trained and skilled rates lesser in relative terms to the lower rates. Are we in fact creating a situation where there is a disincentive to train? Is that argument for flat rates across the award structure creating part of this skill shortage? I can't state that with certainty. I have no evidence to back that up. In fact, my suspicion is that the award rates, particularly in those skilled areas, are probably subject at the moment to significant over-award payments.

PN617

And as I said before, I think it is more likely that the wage rise that we have asked for will be soaked up in over-award payments rather than actually being a real rise. But I think there is a very significant issue in this, if you consider equity to include gender equity and the fact that the workforce that we are talking about today is dominated by women. The other issue I guess that needed to be mentioned in relation to that was the argument that tax arrangements and transfer payments should be taken into account.

PN618

First of all, I think that is irrelevant. But secondly, I would make a point that we had some information that I tabled earlier today that showed that of the people in that category, 46 per cent of them live on their own, 46 per cent of them, which means that they are not receiving family payments and all the rest of it that form the great bulk of those transfer payments. And in fact, I think if I remember it correctly, the quote from Professor Harper talks about - I think I saw the word "families" dominating in that discussion there somewhere.

PN619

No, sorry, it was exhibit R2, the equity with other wage earners, where it talks about the Australian Government's modelling showing that minimum wage

earners with families have disposable incomes that are closer to those of equivalent families. If 46 per cent of our people are living on their own, then they are certainly not in that category. And the other myth I think that I dealt with with research from the Melbourne University was this issue that most of these minimum wage earners live at home with their rich parents, or live in rich households.

PN620

And I think the research that was done and tabled in that document this morning debunks that myth as well. I think that is - we heard an argument - or we heard significant argument about relative merits of the wage price index and CPI, and a finding that our claim had significant premium to CPI. I would I guess raise the issue again that the relative merits of the wage movement indicators has been debated at length, and the Commission adopted the WPI as its key indicator last year.

PN621

If for some reason we were looking at considering the impact of CPI, I think I demonstrated to the Commission this morning that the headline rate of 2.1 is not an appropriate rate to take into account, because the various components of that headline rate have very differing impacts depending on which quintile of income you sit in. And the low-paid people, who we are talking about here, had headline rates - had the headline rate of 2.1, but within that there were significantly higher rates on the staple necessities of their income.

PN622

Indeed, one of them, food, was 4.7 per cent. So to apply and take the headline rate is probably not fair to these people. I think I have discussed the issue of disincentive to bargain. It has been raised again. The concept that everybody can bargain is of course a nonsense. There are any number of reasons why people can't, not the least of which is the employer doesn't want to, secondly that people may not be able to simply - there might be - not issues that they can bargain around. But the concept that everybody can bargain, particularly in the minimum wage and lower award areas where the skills aren't in high demand is just simply not reality.

PN623

I think the thought that perhaps people sit back and wait for the minimum wage rise rather than discuss possible enhancements is a little bit left-field. I also note the anecdotal evidence, and I think, as I said this morning, we have to deal with this on a best-fit basis, and the maximum good for the maximum number. And undoubtedly, there will be people who are affected negatively by that decision, which is why I believe principle 14 exists, so that if there is an employer who finds that this decision is creating hardship, they have the capacity to request relief in that matter. Mr Buchanan highlighted the fact that the rise that we are claiming is actually lower than the two decisions that have been made already.

PN624

And that concludes - the comment I would make on the Government position is that the Government has stated that \$20 is an appropriate amount of money. It reflects the joint submission of the Governments to the AFPC earlier in the

year. The Tasmanian Government's major concern is equity for low-paid workers, etcetera, that reasonable increases will not have any detrimental effect on the economy or levels of employment. The question that remains in my mind, \$22.70 is, if you like, a scientifically derived number. It is based on looking at the wage price index for the Tasmanian situation and applying it. \$20 appears to have no scientific basis.

PN625

PRESIDENT LEARY: It is very easy to calculate though.

PN626

MR COCKER: It is a discount to what I would consider to be a full flow-on of the WPI. The Government hasn't given any justification for that discount, nor has it said why \$20 is a better number than \$22.70. So I am afraid I remain unconvinced, and I think \$22.70 is a more justifiable, a better argued, and an appropriate number. And that concludes my comments in reply, thank you, President.

PN627

PRESIDENT LEARY: Can I just ask you a couple of questions? Are you going to seek to amend your application to include the public sector awards?

PN628

MR COCKER: I can happily do that.

PN629

PRESIDENT LEARY: All right.

PN630

MR COCKER: I am not exactly sure how but - - -

PN631

PRESIDENT LEARY: Just say yes. You are seeking to amend your application to include the public sector awards?

PN632

MR COCKER: The amendment as proposed by Mr Baker, yes.

PN633

PRESIDENT LEARY: All right. The document that was provided which shows the calculation for the meal allowances, I have marked that A6.

EXHIBIT #A6 DOCUMENT SHOWING CALCULATION FOR MEALS ALLOWANCES

PRESIDENT LEARY: I will get one of the associates to get some copies and give you - give it back to Mr Evans. The other thing was, Mr Buchanan, if we give you 14 days - or I have got until 6 July, which is I think 15 days, to come back to us on the amendment to the principles, or earlier if you can do it. Is that reasonable time?

PN634

MR BUCHANAN: Absolutely, President.

PN635

PRESIDENT LEARY: Okay. All right.

PN636

MR BUCHANAN: I was starting to think perhaps I could wait until after the Fair Pay Commission. No, I won't go there.

PN637

PRESIDENT LEARY: No, no. The Fair Pay Commission I don't think is dealing with our principles, in more ways than one. All right. That is all you wanted to put in reply?

PN638

MR COCKER: Thank you.

PN639

PRESIDENT LEARY: Okay. Thank you for your submissions. Thank you to the Court reporter for hanging around till this time. We will reserve a decision and we will adjourn. Thank you.

ADJOURNED INDEFINITELY

[1.25pm]

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