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TRANSCRIPT OF PROCEEDINGS

O/N 111216

TASMANIAN INDUSTRIAL COMMISSION

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

T No 13471 of 2009

PRIVATE SECTOR AWARDS

Application pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 lodged by the Tasmanian Trades and Labour Council to vary all private sector awards re:

(i) increase all award rates and existing allowances relating to work or conditions, in all 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 2009 by the amount of four point five per cent (4.5%) as indicated by the Wage Price Index for the year ending March 2009; (ii) to increase the minimum wage that is payable to adults without regard to the work performed to \$574.00 per week; (iii) obtain a special increase of rates of meal allowances in all relevant awards; (iv) to seek an increase to \$69 in the minimum rate applying in any Supported Wage System; (v) review the Wage Fixing Principles of the Commission

HOBART

10.00 AM, MONDAY, 20 JULY 2009

PRESIDENT LEARY: Thank you, could I take appearances, please?

MR S. COCKER: Simon Cocker for the Tasmanian Trades and Labour Council.

5

PRESIDENT LEARY: Thank you.

MR D. DILGER: David Dilger for the Tasmanian Chamber of Commerce and Industry and I'm also appearing on behalf of the Pharmacy Guild of Australia.

10

PRESIDENT LEARY: Thank you.

MR P. BAKER: President, Member of the Bench, I appear on behalf of the Minister administering the State Service Act 2000, P. Baker, and in accordance with section 27(1) of the Act I also appear on behalf of the Minister for Workplace Relations, who exercises her right of intervention in these proceedings.

15

PRESIDENT LEARY: No objection, of course.

MR DILGER: No, no objection.

20

PRESIDENT LEARY: Any other appearances? Mr Cocker, your application.

MR COCKER: If the Commission pleases, yes. I'd like to, firstly, if I may, make two minor corrections to the application. It has been brought to my attention that, in the first part where we say:

25

In the matter of all private sector awards –

The intention was simply to say all awards, so I would like to delete the word "private."

30

PRESIDENT LEARY: Okay.

MR COCKER: And secondly, in the lower part – it's also brought to my attention that the calculation of \$574 was not correct and it should read \$570.70 per week.

35

PRESIDENT LEARY: I also note that in – part 1.1 of your application, you talk about in words, 4.2 per cent in – and it's 4.5. I'm presuming it's the 4.5.

40

MR COCKER: And I'd like to make a third adjustment.

PRESIDENT LEARY: So 570.70 for the minimum wage, yes.

MR COCKER: Where's the 4.2?

45

PRESIDENT LEARY: In point 1, where it talks about:

Increase all award rates -

Follow on from there, the second last line:

5 *up to 1 August 2009, by the amount of 4.2 per cent.*

And then in brackets, 4.5 per cent.

10 DEPUTY PRESIDENT SHELLEY: Mine says 4.5 per cent and words.

PRESIDENT LEARY: Mine says 4.2.

DEPUTY PRESIDENT SHELLEY: There must be two versions.

15 PRESIDENT LEARY: We have two versions.

MR COCKER: Right.

20 PRESIDENT LEARY: All right, so it's 4.5?

MR COCKER: Yes. We should read off yours, President.

PRESIDENT LEARY: We will take it as 4.5.

25 MR COCKER: So we will add that as well. Yes.

PRESIDENT LEARY: Yes.

30 MR COCKER: The cases and the submissions have been tabled in writing in
advance. We have tabled a case and included as an attachment to that, the ACTU
submission to the Fair Pay Commission from March and while that document is
aimed at the Fair Pay Commission, considerable amount of the information and data
was relevant to the – our discussions in this case. This is the fourth time that the Full
35 Bench has sat to consider the Tasmanian minimum wage under the current
arrangements and if the current plan is to transfer the private sector to the national
system occur, it may effectively be the last and if that is so then we have saved the
best till last.

40 This year's case is undoubtedly the most complex and hardest to deal with of the
four. The reason it's so complex is that the previous three were all argued in times of
economic growth and unprecedented levels of prosperity in Tasmania. Well, this one
is occurring following an unprecedented financial crisis in the global economy and
that's not within our living memories. The outcomes are still not totally clear, and
while the economic indicators are trending in a positive direction, they are still
45 somewhat mixed and it's only going to be with the benefit of hindsight that certain
judgment can be passed on where we are at at the moment. Nonetheless, it remains

our view that the Tasmanian economy is running strongly, it is stable and it can afford the claimed adjustment.

5 Tasmania is not in recession and the forecast declines in economic performance, small reductions to record highs. An explanation of the financial crisis is outlined in paras 2.2 to 2.12 of attachment 2, but these events certainly have been extraordinary. We've seen the high priests of the free deregulated market admitting they're wrong. We've seen global private enterprise corporations crash and others go cap in hand to Government, seeking private equity because public equity survive, and we've seen
10 massive injections of public money to correct those private failures. But as always in the extreme pursuit of wealth by the greedy leaves a mess behind for others to clean up, and that's, I guess, what we're in at the moment.

15 But this case isn't global, it's local. This case is about the living standards of a small group of minimum wage award reliant people in Tasmania. To make that decision it's necessary to try and make some order from the proliferation of information available to us. As usual, we must give prime considerations to the forecasts from Treasury; that needs to be taken into account that these were made with the best available information back in May. Since then there have been a number of
20 indicators that have trended upwards and revised those forecasts. In addition to those that we've already documented, there have been a number of reports and releases during the past week, for example, on the ABC Sunday Morning Business Show yesterday, where the report concluded on China. As we know, China's demand for Australian and Tasmanian resources has been a key factor in Australia's and
25 Tasmania's economic boom.

When the budget was framed, GDP forecast for China for this year were around about 6.1 per cent and that now been revised upwards to nearly 8 per cent. China has had its own economic stimulus. And while iron ore prices and coal prices have
30 fallen they are now being shipped in record quantities, with records being broken every week. In fact, it was interesting when you hear all the discussion about infrastructure problems, they're saying that China's ports actually can't cope at the moment with the amount of iron ore that they're trying to import, they've fifty ships moored off, waiting to unload. That same show reported that the Bank of America
35 has returned to profitability in the last quarter. This followed earlier reports that Goldman Sachs, one of about the fourth largest financial corporation in the world, returned to profit with a four billion dollar profit in the June last quarter. Reports indicating that confidence is returning. Indeed, the analyst on the show was extremely confident and was calling it the end of the financial crisis. In a further late
40 statement the Westpac Bank issued a statement on Thursday last week, with quote in part, it said:

45 *Certainly recent economic data supports stronger and earlier recovery than we previously expected with net exports likely to provide another boost to growth in the June quarter and consumers set to maintain a decent pace in growth there's now a good chance that the economy will withstand the expected sharp contraction in business investment and housing construction and register*

5 *modest, but nevertheless, positive growth. Positive growth in the June quarter will move us further away from the risk of a technical recession, while improvements in confidence are likely to imply somewhat more robust consumer spending, business investment and employment intentions than we have expected earlier in the year. By years end the housing recovery will certainly be supporting growth with the ongoing mention in China and stabilisation of the global economy should support exports.*

10 And that is in addition to those that were included in our submission, talking about the significant growth in business and consumer confidence. Chapter 8 of the ACTU submission dealt extensively with economic forecasts back in March, and even then it concluded:

15 *While forecasts for economic growth are slowed, they remain positive.*

20 Paras 21 to 28 of our submission outlines a number of indicators suggesting that Tasmania is coming through the financial crisis in reasonable shape, but most importantly the credible surveys of consumer and business confidence is showing big increases in these measures. However, even if we rely on these forecasts – if we rely on the forecasts of the Tasmanian budget we can see that there is a modest decline in growth state product and state final demand and that is expected to lead to a modest decline in employment levels in Tasmania. But it should be noted that these levels are still at historic highs. While every job matters, we are not in an employment crisis in Tasmania at this point in time.

25 Such jobs getting as may occur is not the result of the price of labour. In fact, we note the repeated public comment by the TCCI that labour supply is a bigger problem than labour price in Tasmania. So when we talk about the price of labour I guess that brings us back to that disputed territory and that is the impact of the minimum wage; in this time in a mildly reducing market. We accept that the concept – the displacement effect that occurs where employers will retain skilled labour in preference to unskilled labour and they will move their skilled labour to lower paid positions, but we would submit that this is not a function of wages, but is labour hoarding preparatory for the recovery. The temptation of employers is to keep on their best staff even if they have them in lower skilled positions.

40 Chapter 5 of the ACTU submission looks at the issues of connection between the rise in the minimum wage and employment and finds there is no link between moderate and predictable rises and employment outcomes, and despite the extensive research by the Fair Pay Commission, they have not found such a link either. And they conclude, as I say in my submission, its assessment is that on balance most experts consider an excessive wage growth can harm employment growth, which - - -

45 PRESIDENT LEARY: It's a submission that's been put to many so far interestingly enough.

MR COCKER: But it has been a fact that the Fair Pay Commission has maintained a cultural bias towards that proposition through all of its outcomes, and that bias, I would submit, has been exacerbated because the Fair Pay Commission has never been required to consider fairness in its outcomes. It hasn't had requirement to have
5 fair minimum standards nor fair outcomes, nor a fair safety net. Well, in fact, delighted to note that fairness will be restored to the Federal system for next year. And I would also submit that that cultural bias of the Fair Pay Commission would in its forward decision of this year. But this Commission has said clearly that it's not required to consider the outputs of the Fair Pay Commission and we would
10 suggest that there's little benefit in doing so.

We further submit that through all four wage cases Unions Tasmania has argued that the wage price index used is the appropriate indicator for wage movements. Indeed, last year it was applied with the consent of all parties. This has led to a series of
15 moderate and predictable outcomes. Right at the – what we now known to have been the peak of the boom eighteen months ago, we were still willing to accept moderate and predictable outcomes. This claim remains moderate and predictable and certainly should not be rejected on the basis that it will harm employment. This Commission has also indicated that it should consider the impact on industry. I note
20 that this claim, under the options that we've proposed, would raise hourly rates by 30 cents, 40 cents or 60 cents, depending on which option is granted and we would further note, as we have in the past, that it's open to any business to seek relief from this Commission if it can't afford these amounts.

Have a specific example set out for us by the Pharmacy Guild and I thank my friend for that information. I'd note that submission and I'd make four observations about it. Firstly, I'd note the submission that says about 80 per cent of their income for the pharmacies comes by the Federal Government's PBS Scheme. Far from being a
25 negative, I would see this as quite a powerful positive that pharmacies are given a monopoly on supply of prescription medicine and has a guaranteed income from the Federal Government. Secondly, a check of the PBS website and called a Medicare reveal that this income has got two main components. One is a fee for holding stock and the other is a dispensing fee; both of these are across multiple scales. The stock-
30 holding fee is based on price and was last increased in August 2008 when the fee for goods under \$30 was increased from 10 per cent to 15 per cent of value.
35

The dispensing fee is a four level scale based on complexity of the dispensing. The simplest example is the one where the pharmacist takes a pre-packaged drug from the shelf, puts their sticker on it and provides it and there is a fee for that, currently set at
40 \$6.42 per issue. That fee came into effect from 1 July 2009 and I was advised by Medicare that it's reviewed and increased on a regular basis. I couldn't get details of that review on Friday because they required me to request the history in writing, but I suggest it's highly likely that the cost of running a pharmacy is a key component of those increases. Far from – it would appear from me that far from being an inflexible
45 payment, its guaranteed income increased on a regular basis.

PRESIDENT LEARY: The submission of the Pharmacy Guild seemed to indicate that most of the employees in that area are paid minimum wages. Are you aware of that? Do you have any knowledge of what happens in the industry?

5 MR COCKER: I don't, but I have worked through the spreadsheet that came with the submission and I note that – for example, in the example of the pharmacist, the hourly rate attributed there was \$35 an hour and the submission makes it clear that that doesn't include on-costs, it's just purely ordinary time rate. Now, that equates to a weekly income of around about 1300-and-something dollars a week, while the
10 highest rate in the Tasmanian award is \$1097. So clearly the pharmacists are being paid well above award. I also looked at the rate for the pharmacy assistant grade 1 and we find a similar thing, that the highest rate for a pharmacy assistant grade 1 in the award is \$606 a week or \$15.96 an hour, whereas in the spreadsheet they're paying them \$18,40. So it's quite clear from the figures provided - - -

15 PRESIDENT LEARY: So there could be some over-award component, is that what you're claiming it to be, yes.

MR COCKER: The pharmacies are paying over award. And in that instance of
20 course, they have the option of absorbing this increase, they don't have to pass it on at all.

PRESIDENT LEARY: Yes, of course.

25 MR COCKER: And also note that in the example of the owner-pharmacist the \$7000 a year over the spread of hours amounts to about \$2 an hour extra for running their pharmacy. The other issue which clearly differentiates this pay decision from others is the concept of fairness. Now, this issue is dealt with in detail in chapter 9 of the ACTU submission. Again, although it's focused on the Fair Pay Commission, it
30 makes a number of key points, including the maintenance for fair safety net has long-term in Australia been the foundation of a fair society. Minimum wages have declined relative to average weekly earnings significantly since the 1990s. The low paid find it difficult to make ends meet and maintaining the real value of wages is important to ease in financial stress on working families, and finally, it would be
35 unfair and counter-productive to reduce the minimum wages of these groups in the Australian community as they have the highest margin of propensity to consume, and the argument that because they have picked up tax cuts - very limited tax cuts, and the stimulus package bonuses, as an argument not to grant a wage rise, which seem to be again, counter-productive and unfair.

40
It is our further submission as outlined that the key fairness considerations include maintaining the real wages of the low paid, which would include applying the CPI, maintaining the relative position of the low paid and the wage structure, which means applying the wage price index, recognising that these rises are being paid up
45 to 16 months after other workers have had them, given that we rely on figures to the end of March for 12 months, it's quite possible that some of that four per cent was paid to somebody in March 2008, and we're talking about applying 16 months later.

We recognise that to not grant a rise at this time would mean this group would go two years with no increase and would suffer a real pay cut of up to four per cent and a relative pay cut of up to 8 per cent across that time, recognising that women make up 60 per cent of low paid workers and that fair minimum rates are very significant to gender pay equity, and recognising this decision is important to the living standards of many Tasmanian families.

So in final summary, I would add that it is Union Tasmania's case that notwithstanding uncertainty surrounding the economic environment, it is reasonable to forecast recovery and a return to growth later this year and into 2010; that this recovery will be building on already historical high levels of activity and employment in Tasmania, and in these circumstances it would be a harsh decision to deny a rise to low paid workers at a time when it will be 12 months before these issues can be raised again. In our submission we've suggested there might be five options for this decision, but would very much reject the option that says no rise should be granted. Thank you.

COMMISSIONER ABEY: Mr Cocker, can I take you to item 35 of your submission? Do I understand that table as in some way awaiting the CPI components as they would affect the low paid; is that what it says?

MR COCKER: Yes. The left under item, lists the Heads of Expenditure for low paid families. The weighting column is the percentage of income spent on each of those items within a household. The CPI column is the CPI figure which applies in Hobart to each of those figures, and then the weighting is the percentage of the CPI and when they add up, you find it's an effective CPI rate for people who do spend all their money on those things; effective CPI rate at 2.6 per cent per annum.

COMMISSIONER ABEY: So your contention is that the low paid bear a disproportionate burden of the price increases generally in the community?

MR COCKER: That's right, yes.

COMMISSIONER ABEY: Thank you.

PRESIDENT LEARY: I will mark your submissions as an exhibit. I'll mark them as A1 and note that there was a – perhaps if we mark the submissions that were filed late on Friday rather than the earlier ones, then I don't have to deal with the page numbers. All right, so I'll mark those A1.

EXHIBIT #A1 MR COCKER'S SUBMISSIONS

MR COCKER: Thank you.

PRESIDENT LEARY: Thank you, Mr Cocker. I should have mentioned earlier, we received very late on Friday night – hence we didn't get it till this morning – a written submission from the Victorian Automobile Chamber of Commerce. They were responding to the notice of hearing. I'll make copies available to you and you
5 can have a quick look at them. We'll take a short break and you can have a look at them to see whether you want to address them or not and whether we should accept them due to the late notice. So if you could just provide the parties with a copy. I don't know whether you want to do that now? It's a fairly short submission, goes for 11 pages. It's not surprising, I could say that.

10 MR DILGER: Well, maybe if you just give us two minutes, Madam President.

PRESIDENT LEARY: Right. We'll sit and watch you read it.

15 MR DILGER: Yes.

PRESIDENT LEARY: Because we'll have a chance to read it too.

20 MR DILGER: It may be very similar to mine, anyway.

PRESIDENT LEARY: I think it generally is, yes. I think in general terms, it's similar to the Fair Pay Commission. Perhaps, Mr Cocker, if you wanted to make any comment?

25 MR COCKER: I've got to page 7 and from what I can see, what it's saying is very different to the submission my learned friend at the other end of the table - - -

30 PRESIDENT LEARY: Yes. Okay. All right, you can address it then after we've heard from the other parties, if you like. Mr Dilger?

MR DILGER: Madam President, thank you. I rely principally on the written submissions already provided, but I'll just make some comments - - -

35 PRESIDENT LEARY: I'll just mark those before we start – I'll mark those R1.

**EXHIBIT #R1 SUBMISSION FROM VICTORIAN AUTOMOBILE
CHAMBER OF COMMERCE**

40 PRESIDENT LEARY: Thank you.

45 MR DILGER: - - - raised by Mr Cocker, talking about – that we are in unprecedented times of economic uncertainty, countering that with the three previous years when the state's commission was in times of unprecedented growth and prosperity and so we are no longer in those times. And whilst there were some pockets of descriptions where we talked about some economic recovery, I think the overwhelming evidence provided by the Tasmanian Government, of which Mr Baker

has already presented his written submissions, the OECD overwhelmingly are different to the picture painted by Mr Cocker. And it's interesting to note that just yesterday, Sharan Burrow, the President of the Australian Council of Trade Unions made these points. She said:

5

Any positive economic signs mean nothing if the unemployment rate continues to spiral upwards.

Rejected the encouraging signs within the business sector as a false dawn, saying:

10

Jobs are the only true measure of economic stability.

And went on further to say:

15

Green shoots on the stock exchange or the added value that shares might gain or profit take of major financial houses, none of these will actually make for jobs and job security. Investment in jobs, that's the critical piece. Employment must be the benchmark for recovery.

20

And she says:

It's all about jobs and on that front, it will get much worse before it gets better.

25

So I think that's - - -

PRESIDENT LEARY: What does all that mean?

30

MR DILGER: What it means is that – and very consistent, particularly with what the Tasmanian Government are saying, that the economic recovery is a long way off – in fact, it will be 2012, 2013 for Tasmania – and any recovery that's being talked about internationally is likely to be short lived. The OECD talk about a “W” in terms of economic recovery. So whilst no-one's saying any recovery is a bad thing – we all think it's a good thing – we just have to be mindful that in making any such decision, we should be aware of the economic instability that exists at the moment.

35

And it's for these reasons that we submit that – and heavily consistent with what the Australian Fair Pay Commission have said; there should be nil increase for the state wage case. And in the alternative, if you were minded to give any increase we should delay that increase until we have a better picture of what's going on because I think the overwhelmingly evidence is nobody knows how deep or how bad it can get, but we know it's certainly worse than what we've ever seen before, save for the period after the Great Depression.

40

45

PRESIDENT LEARY: When you suggest that we perhaps delay it if there's going to be any increase until we get a better picture that could be forever, couldn't it? I mean, there's no time on that.

MR DILGER: It could - - -

PRESIDENT LEARY: Because it seems to me that it depends who you listen to as to where this is all going. No-one seems to know exactly what the future is going to deliver.
5

MR DILGER: I think that's correct, Madam President. However, there is some persuasive evidence out there, such that the Western Australian Commission believes that October 1 would be an appropriate date. They've already made their decision and I think the evidence they relied on is quite persuasive, albeit their economy was perhaps the boomiest state that was in existence at the time. However - - -
10

PRESIDENT LEARY: The most affected?

MR DILGER: The most affected.
15

PRESIDENT LEARY: Yes.

MR DILGER: But I think the economic circumstances for Tasmania - and particularly where we have a higher proportion of persons on the minimum wage could be felt here as well.
20

COMMISSIONER ABEY: Mr Dilger - sorry, your comment - I can't quite remember the words, but it was along the lines that this is the worst we've ever known. How do you rationalise that comment when we're running an unemployment level currently in the low fives and in the nineties, which is in recent memory, peaked, I think, close to 13 per cent?
25

MR DILGER: Because - - -
30

COMMISSIONER ABEY: The population was in decline.

MR DILGER: - - - unemployment is not the only factor in determining the whole of the business economy and what we're looking at - we're looking at the government projections coming up to 8.25 per cent. So we're coming off some previous highs, but there were some other significant economic factors at plan then. But overall, economists are in agreement that this is the worst we've ever faced and for Tasmania, worse to come, until that recovery 1212, 1213 - sorry, 2013.
35

PRESIDENT LEARY: It's a comment you don't hear very often that economists are in agreement.
40

MR DILGER: Well, as far as agreement goes for economists. So we're probably coming off a low base. But I think there's general consensus out there that - and hence the unprecedented action by governments right across the world in dealing with this economic crisis.
45

COMMISSIONER ABEY: Yes, I acknowledge what you say and there can be no argument that it is extremely serious, nonetheless the direct comparison with the nineties is of some interest and certainly in terms of things like unemployment, we're running about half what we were then with a declining population, which even
5 makes that worse.

MR DILGER: A lot of leading indicators in the current figures, which I don't go into in detail, they're all contained in my written submission, which talk about the business confident and how we're going to get out of this level of – the economic
10 situation that we're in and all of those would favour an argument that this is much worse than the nineties.

COMMISSIONER ABEY: Okay. I won't press the point.

15 MR DILGER: Madam President, I wouldn't have anything further to add that's already contained in my written submissions, but I'm happy to answer any questions or wait till Mr Baker has perhaps provided his submission.

PRESIDENT LEARY: You can it that we've all read the written submissions.
20 There was one question – and your submissions also include the submission from the Pharmacy Guild of Australia?

MR DILGER: The Pharmacy Guild.

25 PRESIDENT LEARY: Yes.

MR DILGER: But I have no particular additional submissions to make on what they've written. I'm just appearing on their behalf.

30 PRESIDENT LEARY: No. Mr Cocker, in his written submission, suggests that the wage-fixing principles – those beloved principles that Mr Baker and I debate year in year out – have no further use.

MR DILGER: And we've said, given we're seeking – I'm in agreement with that
35 submission from Mr Cocker and Mr Baker.

PRESIDENT LEARY: Okay.

COMMISSIONER ABEY: Mr – sorry.
40

PRESIDENT LEARY: It wasn't quite the response I expected.

DEPUTY PRESIDENT SHELLEY: It makes sense, very good.

45 COMMISSIONER ABEY: Mr Dilger, a couple of questions. You make reference to your survey of – expectation survey. Do you have a copy of the latest survey?

MR DILGER: I do. It's actually – most of it's actually contained in those last points. If you have a look from – it's from about points 70 – 76 onwards. All of those points are taken from that business survey. So the composite business barometer is point 76. So all of those points are taken directly from that recent survey.

COMMISSIONER ABEY: For the June quarter?

MR DILGER: That's correct.

COMMISSIONER ABEY: And you may not be in a position to answer this, but the Pharmacy Guild submission seems to be relying more on the relationship with - their capacity to increase prices and the PBS rather than the global-financial crisis and if I can summarise their submission. They're essentially saying that their income stream is fixed by the PBS system and there is no capacity to increase prices or in some way deal with a wage increase, if it's awarded. Does it follow from that that at the time that the PBS is reviewed – and I daresay it is from time to time – that community pharmacies increase wages for their employees as a consequence?

MR DILGER: I'm sorry, Commissioner, I'm unaware of the actual situation in that and I don't have instructions to provide any further submissions on that. So I apologise for that.

COMMISSIONER ABEY: No, there's no need to apologise. I tend to doubt that they do and I suspect that the PBS review takes into account cost increases that have occurred in the preceding period. That's the normal case with government payments. But if you're not in a position to answer that then I fully accept that.

PRESIDENT LEARY: Following on from the Commissioner's decision, I guess there's been nothing put before us that indicates that following the last state wage case increase that there was any particular impact in the pharmacy area anyway. But the question I was going to ask you is, do we have any numbers as to how many people are now affected by the state wage case, other than public sector – within the private sector and of course come next year, they won't be affected?

MR DILGER: We thought it was 3.3 per cent of businesses. Now, the numbers are unable to be determined, but I think in conservative estimates 50,000 was what we considered would be affected by that.

PRESIDENT LEARY: And would most of them be - - -

MR DILGER: Sorry, that is, - sorry, that was the – that was constitutional corporations - - -

PRESIDENT LEARY: Yes.

MR DILGER: - - - at the Australian Fair Pay Commission decision.

PRESIDENT LEARY: Yes.

MR DILGER: But still 3.3 per cent of businesses. So I don't have any particular numbers on that.

5

PRESIDENT LEARY: So it may be less than that?

MR DILGER: Well, I would think it would be.

10 PRESIDENT LEARY: Yes, because it's really only partnerships, trusts, and a few other small companies.

MR DILGER: That's right.

15 PRESIDENT LEARY: So we don't know how many people – how many employees will be affected if there is any increase and we don't know whether the people that may well be affected are minimum-wage people anyway and that any increase won't be absorbed. So it's a bit of a grey area.

20 MR DILGER: It's certainly grey, but I think the evidence is – and the economic evidence is that – and relying on some of the materials that Mr Cocker put forward and in some level of dispute with those, that saying that where you have – and he used the word, "excessive" and I think that's where there are some materials there that the Federal Government relied on – and there is some research – and I'll just
25 quote who that is. It was by – the Federal Government, in its submission, relied on a 2006 study by the National Bureau of Economic Research.

PRESIDENT LEARY: Yes.

30 MR DILGER: That was a meta-study that analysed 86 previous studies on the subject and it found overwhelmingly that there was a direct correlation between excessive wage increases and a reduction in the capacity of low-skilled workers to find and maintain jobs. So if you have a look at that, that's evidence. Now, we both
35 rely on that term, "excessive" because excessive depends on the economic circumstances that you find yourself. So previously, in 2008, we had an increase of 3.6 per cent, which was \$19 in boom times and so now when you're asking for 4.5 per cent in the worst economic situation we're in, that's clearly excessive.

40 In fact, anything by the definition – what we've got to say is anything below 3.6 is in the right territory, anything above that is going to be clearly excessive and it could be well argued, as we're arguing today, that given the economic circumstances anything above zero is actually excessive. So it's a matter of degrees. So I don't think there's any dispute in terms of that statement. It's just what's excessive. And what we're
45 looking at – Mr Cocker talked about it must be in the interest and fairness of the interest of the low paid.

Well, with all due respect to Mr Cocker, the state wage case is about, overwhelmingly, the public interest. It's not just about the low paid. Have a look at the decisions – sorry, the legislation in there and the words, “low paid” doesn't spring out as much as what – the overall public interest. So when we're looking at this, we have to look at the whole economy. The whole effect of all of Tasmania. And for those reasons – and we think it's highly persuasive that you should – not adopt the reasoning of the Australia Fair Pay Commission, but adopt their decision in awarding a meal increase. Thank you.

10 PRESIDENT LEARY: Mr Baker?

MR BAKER: Thank you, President. It's my role today to address you on the issue of public interest. Public interest is defined by section 36 of the Act. And, in particular, at 36(2), it says:

15

Before deciding whether a proposed award or a proposed industrial agreement should be consistent with the public interest, the Commission shall consider the economic position of any industry likely to be affected by the proposed award or proposed agreement; and (b) 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.

20

That's also mirrored in the current wax-fixing principles at point 4 of the award safety net:

25

The award safety net may, on application, be reviewed and adjusted from time to time to ensure its relevance. Generally, the detailed nature and timing of any adjustment will be determined in the context of specific applications and in light of prevailing economic, social and industrial circumstances.

30

There has been some discussion this morning in relation to the economic data that's been put before the Commission. Likewise, President and Members of the bench, we have submitted a document to you, which I would draw your attention to.

35 PRESIDENT LEARY: We'll mark it M1.

MFI #M1 EXTRACT FROM THE TASMANIAN BUDGET 2009/10

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MR BAKER: Which, as the document says – and I'll identify it for the sake of the record. It's an extract from the Tasmanian Budget 2009/10. Budget paper number 1, section 2, the Tasmanian Economy as presented by the Honourable Michael Field, MLC, Treasurer, June 2009.

45

DEPUTY PRESIDENT SHELLEY: Michael Field?

MR BAKER: Sorry?

DEPUTY PRESIDENT SHELLEY: Michael Field?

5 MR BAKER: Did I say Field?

DEPUTY PRESIDENT SHELLEY: Yes, but actually the document says Michael Aird, so take your pick.

10 PRESIDENT LEARY: Yes.

MR BAKER: Oh dear.

PRESIDENT LEARY: Just pick a name.

15

MR BAKER: I must admit I take full responsibility for that as it was my typing, so
- - -

PRESIDENT LEARY: So it should be Michael Aird.

20

MR BAKER: Michael Aird. I noticed, Commissioner Abey made reference to the situation that existed in the 90s during some of the state wage cases, and in particular I would draw your attention to one that has occurred when things weren't too bright, back in 1999, in T8413 and 8483 of 1995. The Full Bench on that occasion was
25 comprised of the Deputy President Johnson and Commissioners Watling and Imlach, and there had been some vigorous discussion during those proceedings as to the state of the economy in Tasmania and the commission made this observation in relation to the economic data that had been presented by the various parties:

30

The Tasmanian Government, on the other hand, and in our opinion, being mandated to do so by reason of its election to office, spoke about the whole Tasmanian economy, including the individual sectoral interests that comprised that economy. The government, again by reason of its election to office, is also responsible to the electors for the performance of the state's economy. That is not the level of responsibility that falls upon the TCCI or business interests that others represent.

35

So I make the point that the data which we supply you is supplied without the encumbrances of any sectoral interests. It's based purely on the government's point
40 of view as to the current state in the economy. And in particular, you will see at the executive summary on page 2.1, and I will just note a couple of these dot points for your benefit:

45

Tasmania has entered the current world-wide economic recession with above trend economic trend, strong investment levels and low unemployment. It therefore faces this period of economic downturn in a strong position that has been during previous national recessions.

The document actually goes on to talk about the global financial crisis and it goes on to talk about the lag that may well occur within the Tasmanian economy, and indeed, whereas there may – the document talks of the lag as far as the downturn is concerned, but it also talks of, in detail, that the projected improvement that may be
5 foreseen, may also be later. One of the interesting issues – one of the issues that was addressed both by the Australian Fair Pay Commission and also by this document, is, in fact, the level of employment. In the budget paper at 2.8, page 2.8, there is a reference to the labour market:

10 *The labour market is not expected to show strong growth over the forward estimates period. As conditions improve it is likely that average hours of work will increase without significant growth in employment levels. In Tasmania unskilled workers tend to be more vulnerable to redundancies in periods of job shedding, while skilled workers remain in relatively strong demand. When the labour market improves employers tend to seek skilled workers with the result that many unskilled workers remain unemployed or leave the workforce. This constrains the recovery of employment in Tasmania as it has a smaller share of skilled workers and can lead to significant increases in long-term unemployed.*

20 And over the page it makes an estimate at the level of unemployment at 4 and three-quarter per cent. As we know, President and members of the bench, the current rate of unemployment currently stands at 5.3 per cent and as the document indicates, it will – that level of unemployment is expected to rise in the foreseeable future. In addition to the comments that are contained in the budget papers, there is a similar
25 comment that was made in the executive summary of the Australian Fair Pay Commission comments in relation to the economic and labour market outlook.

Whilst opinions vary most analysts expect employment to continue to fall through 2009/10, with unemployment rising towards 8.5 per cent of the labour force. In
30 previous downturns the increases in unemployment have taken many years to reverse and the Australian Government now projects that unemployment will not return to current levels for approximately six years. The scarring effects of unemployment magnifies the costs associated with downside risk. Unemployment tends to affect more severely those people who already are vulnerable, low paid and low skilled
35 workers.

Many people who become unemployed during a recession do not re-enter paid employment and instead become long-term unemployed or leave the labour force. Therefore the commission considers its main priority in this decision is to protect
40 jobs in the short term and help job seekers to be competitive in the labour market. Again, as Mr Dilger has indicated, this commission is not obliged to observe or take note of a decision of the Australian Fair Pay Commission, but we believe that, given the circumstances that confront the economy, both in Tasmania and nationally, that it is relevant in those circumstances.

45 We say, President and members of the bench, that your decision needs to give effect to three things. In your consideration we say that you, the bench, must take account

of the current state, national and economic conditions. The decision needs to be balanced in ensuring that those persons who are currently unemployed are not priced out of the labour market, as well as the need to ensure that those in the workforce remain so, and the government reiterates its support for a fair and effective safety net
5 of minimum wages and entitlements for employees subject to an ongoing review, although, of course, for the private sector workers this may well be the last time that that occurs as far as employees subject to awards of the Tasmanian Industrial Commission.

10 Having spoke of the Australian Fair Pay Commission, I suppose it is – well, not suppose, it is relevant that I should advise the commission of the position of the Tasmanian Government in respect to its submission to that body, and in that submission, and it was a short submission, but the key phrase was that the minister at
15 the time, and we're talking late February, early March, indicated at that time that an increase in the minimum wage that is economically sustainable in the current national and global economic conditions, and that was the basis of the submission that was made at that time.

20 We say that the circumstances that pertain to the Australian economy, and indeed, the Tasmania economy, has not altered since that time, and whilst there have been some indicators that demonstrate that there has been an improvement in the economy, we say that the documentation that has been supplied by the Tasmanian Treasury ought to be the documentation that is relied upon in any consideration of
25 your decision.

COMMISSIONER ABEY: Mr Baker, I didn't quite hear that. What did the state government put to the Fair Pay Commission in February? That one line you just used?

30 MR BAKER: In February/March the increase in the minimum wage that is economically sustainable in the economic – sorry, in the current national and global economic condition.

DEPUTY PRESIDENT SHELLEY: So it was arguing for an increase but the
35 increase should take account of those factors?

MR BAKER: Well, that may be - - -

DEPUTY PRESIDENT SHELLEY: Read into it what you will.

40

MR BAKER: You read into – yes.

COMMISSIONER ABEY: Well, I'm sorry, I don't – I just don't quite understand that – what that line says – what that says.

45

DEPUTY PRESIDENT SHELLEY: Yes, just give us the line again.

COMMISSIONER ABEY: I'm sorry, I - - -

MR BAKER: No, no, no.

5 COMMISSIONER ABEY: - - - it is an important point and - - -

MR BAKER: It is an important point.

10 COMMISSIONER ABEY: - - - I just want to understand it properly.

MR BAKER: The submission that went to the AFPC said first of all you need to consider the economic conditions that are prevailing within our community at the present time, and also take into account those economic drivers from around the world that impact upon our community, both at the national level and at a state level,
15 and in viewing any increase that may arise from your decision, your decision needs to reflect those prevailing conditions.

COMMISSIONER ABEY: Thank you. I understand it now.

20 MR BAKER: And subject to any questions from the bench, I will conclude my submissions there. The documentation, as I said, I think speaks for itself. The only other issue I presume that I will need to address is the wage-fixing principles. I will miss out - - -

25 PRESIDENT LEARY: It wouldn't be a state wage case without that.

MR BAKER: I will miss our discussions, President.

30 PRESIDENT LEARY: Yes, indeed.

MR BAKER: I'm loathe to let them go, but I think - - -

PRESIDENT LEARY: Fight it, resist it.

35 MR BAKER: I think the odds are against us and quite frankly, I think they have probably reached the end of their life with the private sector in its entirety, moving into the federal jurisdiction. Their relevance would appear to be extremely limited, if at all. And the only other comment I would just make in relation to the number of persons that this application actually relates to, it is extremely difficult to actually
40 obtain data that is accurate as to who is left - - -

PRESIDENT LEARY: We realise that.

45 MR BAKER: - - - in Tasmania and there are, I suppose one might say, some good guesses around as to who it applies to, but I think it is fair to say that the vast majority of employees in the private sector are now covered by federal awards or notional agreements preserving federal awards, which leaves that of the employees

that are left how many of those are award reliant employees, and true employees in the sense of the word, is a matter for some deliberation.

5 PRESIDENT LEARY: And something we will possibly never be able to work out.

MR BAKER: No, no, that's true, but if you worked on an assumption that 65 to 70 per cent of private sector employees have already gone into the federal jurisdiction, it leaves 30 per cent, 30 per cent is perhaps 30,000, and of those how many are actually award reliant? Are we looking at 10 per cent, 12 per cent, 15 per cent, and it is - - -

10 PRESIDENT LEARY: Bit of stab in the dark.

COMMISSIONER ABEY: Thirty - - -

15 MR BAKER: - - - and I agree with Mr Dilger, like, it's a very difficult figure to put at, and what does the 3.3 per cent of businesses actually represent? You know, are we talking about Coles and Woolies, or are we talking about the corner store?

PRESIDENT LEARY: And, as you say, whether or not they are award reliant or even comply with an award. We just don't know.

MR BAKER: Precisely.

25 PRESIDENT LEARY: The other part of the application, I didn't ask Mr Dilger, but perhaps he can have a - whether you have a comment about the increases in the meal allowances and the supported wage, which is something we need to raise.

DEPUTY PRESIDENT SHELLEY: So 5.7 - - -

30 MR BAKER: In relation to - - -

DEPUTY PRESIDENT SHELLEY: - - - the meal allowance, yes.

35 PRESIDENT LEARY: Yes.

MR BAKER: In relation to the meal allowances they have actually no effect for public sector workers. There is a separate set of allowances for meal allowances, which are subject to review in accordance with movements in the Australian Taxation figures, and that matter is actually before the bench in a couple of weeks

40 time, and in relation to the supported wage - in relation to the supported wage, if there is a movement in award-reliant wages, then I would - clearly, one would need to support the variation to that component as well.

45 PRESIDENT LEARY: The application seeks to vary all awards in all of the state awards in the commission, but as far as the public sector is concerned, any increase is absorbed, and the awards might be up-to-date for a change.

MR BAKER: Well, we're getting there, President. But in relation to the supported wage, there are many awards of the – public sector awards that actually have the supported wage in them.

5 PRESIDENT LEARY: Yes, okay. And is it still – what figure is it at, do you know?

MR BAKER: It is at the – the current figure. In fact I think we actually moved the public sector awards before the private ones were moved.

10 PRESIDENT LEARY: Okay, all right. Thank you.

COMMISSIONER ABEY: Just so I understand this, are we talking about public sector awards, in this application?

15 MR BAKER: Yes.

DEPUTY PRESIDENT SHELLEY: Yes.

20 PRESIDENT LEARY: The revolution.

COMMISSIONER ABEY: Well, aren't the majority of public sector awards – I hate to use this term, but paid rates awards? I mean, aren't they – don't they reflect the actual rates?

25 MR BAKER: Not all of them, Commissioner.

COMMISSIONER ABEY: No.

30 PRESIDENT LEARY: Part of the process.

COMMISSIONER ABEY: - - - but the ones that do?

MR BAKER: The ones that do, do.

35 PRESIDENT LEARY: Yes.

MR BAKER: But they also have the supported wage provision in them.

40 COMMISSIONER ABEY: Yes. I'm not so concerned about the supported wage but 'm talking about the wage rate.

MR BAKER: Yes.

45 COMMISSIONER ABEY: Are you suggesting, for example, that if the bench was minded to grant any increase, that that should apply to, for example, the police award?

MR BAKER: No, no. Mr Cocker's application would exclude public sector awards.

COMMISSIONER ABEY: Well, that's what I thought.

5

MR BAKER: Yes. They would be excluded. The only impact on public sector workers is wage-related allowances, and we have - - -

COMMISSIONER ABEY: Perhaps - - -

10

DEPUTY PRESIDENT SHELLEY: I'm confused now.

PRESIDENT LEARY: Yes. Go back and start again.

15

DEPUTY PRESIDENT SHELLEY: We amended the application - - -

PRESIDENT LEARY: Yes.

DEPUTY PRESIDENT SHELLEY: - - - to - - -

20

PRESIDENT LEARY: In all awards.

DEPUTY PRESIDENT SHELLEY: Yes, to – yes, Mr Cocker said all awards including the public sector.

25

MR BAKER: Yes.

PRESIDENT LEARY: There's no real increase for public sector because they will be absorbed. Is that - - -

30

MR BAKER: Yes. they will – yes, the wage rate would be absorbed - - -

PRESIDENT LEARY: Yes.

35

MR BAKER: - - - against the current - - -

PRESIDENT LEARY: Minimum wage will be increased – do the public sector awards still have a minimum wage included in them?

40

MR BAKER: No, the last one of those has now been removed.

PRESIDENT LEARY: Okay. So does it have any impact at all?

45

MR BAKER: The only impact it has on public sector awards is firstly the supported wage, and secondly, the wage-related allowances which you may recall, President, we actually updated them from 1991 through to 2006, so obviously we would want those to increase this year as well.

COMMISSIONER ABEY: I don't want to be pedantic about this, but my understanding, certainly in the case of the police award, is that that award reflects the actual rates that are being paid now, and I understood that the state sector award, whatever it's called these days, is in a similar position, as are most public sector awards. That changed. I know that hasn't been the case in the past, but as I understand it, that is the current practice. Now, if we were to grant an increase, that would be over and above the rates that are actually shown in the awards as of this moment. There wouldn't be any question of absorption.

10 PRESIDENT LEARY: It talks about award rates. This is where we get into difficulty.

MR BAKER: Well, Mr Cocker put the application together and this is how he decided to phrase it. What I have done in the past, which has caused some confusion, was that I presented to the bench a list of public sector awards that needed to be varied, I suppose, by way of allowances being increased or supported wage, etcetera.

DEPUTY PRESIDENT SHELLEY: Well, couldn't the application simply read that it applies to private sector awards excepting for the public sector as far as allowances and supported wage is concerned?

MR BAKER: Well, that would get over it.

25 COMMISSIONER ABEY: That would get over it, yes.

PRESIDENT LEARY: Increase all award rates in private sector awards and existing allowances relating to work or conditions in all awards. Something like that.

30 DEPUTY PRESIDENT SHELLEY: Yes, something like that.

PRESIDENT LEARY: Yes, okay.

COMMISSIONER ABEY: That would get over it.

35 PRESIDENT LEARY: That handle what you want to do?

MR COCKER: No. The intention – our intention was to bring what will be the remaining awards of the Tasmanian Commission within potential for this or future cases. In part 43 of our submissions we've dealt with it by submitting that any rise in this wage case should be absorbed to the extent that those awards have had rises in rates since the last wage case in 2008, so in practical effect my understanding is there will be no rises to any of the awards - - -

45 PRESIDENT LEARY: Zero.

MR COCKER: - - - because they've already done better than this since that time. There may be a point in the future where this wage case is used for setting public sector wages, so we don't want to rule it in or rule it out, so it is our intention to go down that path.

5

COMMISSIONER ABEY: Well, Mr Cocker - - -

DEPUTY PRESIDENT SHELLEY: But if you're moving award rates - - -

10 COMMISSIONER ABEY: - - - if the award currently reflects what is being paid now, and your application is to increase them by 4.5 per cent, and we were minded to grant either that or some other figure, then wouldn't that increase the rate of pay that is shown in that public sector award now?

15 MR COCKER: What we are suggesting is that in your decision you require that those rises be absorbed into rises already granted in the period.

COMMISSIONER ABEY: Okay. So it's - yes, okay. So it would have no practical effect on the rates that are actually expressed in the - - -

20

MR COCKER: Not out of this case, no.

COMMISSIONER ABEY: Thanks.

25 PRESIDENT LEARY: I think what you're trying to is address the historical feature, which was that state awards weren't moved with state wage increases, therefore the minimum rate was lagging behind, and I think what you're trying to do is to maintain in those awards that aren't now paid rates awards, that they maintain the same level of minimum award rates. Is that generally - - -

30

MR COCKER: Well, I think our intention was broader, but it would have that effect.

35 PRESIDENT LEARY: Yes. As well as increasing the allowances and the supported wage? Okay, I think I understand that.

MR COCKER: It's not our intention to get further pay rises for the public sector from this case.

40 PRESIDENT LEARY: Yes, that might be a bit wishful, yes.

45 DEPUTY PRESIDENT SHELLEY: Getting back to the supported wage, isn't that moved according to some other fact - outside factor? You will remember this, Mr Baker, we actually had to amend a previous application and it relates to some disability payment.

PRESIDENT LEARY: And it's now \$71 anyway.

MR BAKER: Yes.

DEPUTY PRESIDENT SHELLEY: Yes.

5 MR BAKER: I think you are right, Deputy President.

DEPUTY PRESIDENT SHELLEY: Yes.

10 PRESIDENT LEARY: It's an application by the ACTU, which they put in each year with the national whatever it's called.

MR BAKER: Yes, and there was – and it was to do with the - - -

15 DEPUTY PRESIDENT SHELLEY: And it relates to something – another thing that's set - - -

MR BAKER: Yes, there's a - - -

20 DEPUTY PRESIDENT SHELLEY: - - - that's paid to people with disabilities, but now it checks that.

PRESIDENT LEARY: With the rate of 71. The current rate is \$71, but - - -

25 MR COCKER: I have noted that there is a rate of \$71, but I'm not familiar with the background, though my understanding is we've done this in the past this way but I may well be wrong.

30 PRESIDENT LEARY: Well, we've picked up what's happened federally. I'm not too sure whether it was the Fair Pay Commission or something through the Federal Commission - - -

MR COCKER: Yes.

35 PRESIDENT LEARY: - - - but it's now at \$71.

DEPUTY PRESIDENT SHELLEY: Yes. And we had to have a special application then in respect of state awards to move them in accordance with that other measure, because we moved them by the wrong amount. I'm sure you would remember this.

40 MR BAKER: Yes, there is, there's a – the figure is actually derived from some calculation, which the Federal Government do through Centrelink.

PRESIDENT LEARY: That's right.

45 MR BAKER: And that's the figure that's used to increase the rate.

PRESIDENT LEARY: Do you have any objection to it being brought up to whatever the Federal level is?

MR BAKER: No, not at all.

5

PRESIDENT LEARY: All right. Are you happy if we have a look at that or do you want to do it by separate application?

MR COCKER: I'm happy to be guided by what you think is best.

10

DEPUTY PRESIDENT SHELLEY: What is it in the state awards at present? No, that's 66 or something, is it?

MR COCKER: 66, I think.

15

DEPUTY PRESIDENT SHELLEY: Okay.

PRESIDENT LEARY: So if it's 66, that brings it up \$5 to 71. so if we change your application to seek an increase to \$71 for the supported wage system.

20

MR COCKER: I'd be happy to do that, Madam President, yes.

PRESIDENT LEARY: Yes, all right. And there's no objection to that? And you're taking on my word that it's \$71. I'll have to go back and check that, but I'm pretty sure it is.

25

MR DILGER: I'm sorry to break the agreement, Madam President and Members of the Bench, but we'd have an objection to any change. If there's a separate – as part of this application, we're saying that if you don't make an adjustment to the minimum wage, then you also shouldn't follow on with that adjustment to the supported wage. However, if you do make an adjustment, we would be happy to have that adjustment reflect the same level of adjustment for the wage price – sorry, for the minimum wage. However – and the other alternative of that is if there is a separate application where federally this has been moved and that it's been the decision to move that separate to the decisions and the considerations that you – to arrive at the minimum wage, then we would support that.

30

35

DEPUTY PRESIDENT SHELLEY: I think it's been a matter of convenience that the supported wage has been moved at the same time, but it's never been moved by a measure that's related to the increase in the minimum wage, it's a different – it's derived from a different source altogether; it's just been a matter of timing and convenience.

40

MR DILGER: Well, perhaps I could just maybe – if the President and the Members of the Bench were minded that we would hold that for further written submissions after today - - -

45

PRESIDENT LEARY: All right, we will deal with it separately.

MR DILGER: - - - just on that matter.

5 PRESIDENT LEARY: Because it's not – it's got nothing to do with CPIs, WPIs, ABCs or XYZs actually. It's based on a special formula, but we need to first of all confirm that it is \$71 and we'll deal with it. Just get some written submissions from you. Okay with that. All right.

10 DEPUTY PRESIDENT SHELLEY: Yes.

PRESIDENT LEARY: The other thing that we needed to discuss was the VACC submission. Does anybody want to make any comment about that?

15 MR COCKER: If it pleases the commission, I'd note only that – I think you described it as a fairly generic document, and very limited in any detail in relation to Tasmania or Tasmanian businesses.

20 PRESIDENT LEARY: It does talk about the decision in 2008 but it doesn't say what impact it had, which doesn't give us much guidance. We will mark the document VACC1 in any case. Did you want to make some response?

25 **MFI #VACC1 VACC SUBMISSION**

MR BAKER: Perhaps if I just make an observation, President. The RS & R industry is a very diverse group of employers that consists of, amongst other thing, dealerships. Although I'm not sure how many of those will be now left in the state system, but the others are primarily - - -

30 PRESIDENT LEARY: Right.

MR BAKER: - - - service stations, very, very small garages and the like. So it's a very – it's a - - -

PRESIDENT LEARY: So any impact, if there is any increase granted, would be very minimal.

40 MR BAKER: It would be very minimal, but I do make this observation that they are award reliant employers.

PRESIDENT LEARY: Are they?

45 MR BAKER: Yes, very much so.

COMMISSIONER ABEY: And the impact on the individual service station might not necessarily be minimal. I mean, if - you look at things in global terms and say because it's only dealing with service stations, that's not going to have a huge impact on the state economy, but it might have some impact on individual service stations.

5

MR BAKER: Most certainly. Particularly these days of discounting as we've seen in recent times. So it does go into - and I mean many of those service stations of course are incorporated businesses - - -

10 PRESIDENT LEARY: Yes.

MR BAKER: - - - who are no longer part and parcel of this jurisdiction.

15 COMMISSIONER ABEY: I mean, the point I'm making is that you can say that this decision affects whatever the percentage is of the Tasmanian workforce, and because of that you might conclude well, whatever we do is not going to have a huge impact because in global terms it's not a big number, but I think that would be not a proper approach, because the impact on individual employees and individual employers where they are affected are affected one hundred per cent with whatever we might do.

20

MR BAKER: Of course, but I would view the document with some scepticism as many of the persons that are discussed in this document are and have been cited under the federal award for many years.

25

PRESIDENT LEARY: Yes, that was my understanding, but there would be some that are not.

MR BAKER: And equally there are the others.

30

COMMISSIONER ABEY: Yes.

PRESIDENT LEARY: We just don't know who.

35 COMMISSIONER ABEY: Yes.

PRESIDENT LEARY: Mr Dilger?

40 MR DILGER: Thank you, Madam President, I take where Mr - Commissioner Abey's point leads us to and I think where this submission is focusing on is not those people covered by the federal awards, I think it's talking about the very small businesses that are like your garages and your independent service station owners, who are very vulnerable to external pressures because they have such small turnovers, limited cash flow and they have limited amounts to cover additional and
45 normal wage labour costs, and labour costs directly, rather.

And one of the things they point out in that submission is that the vulnerability of those businesses can also have a significant effect on where they may be - and we've often seen that they are perhaps the only business in certain towns where the service station, the local garage is all into one so that they can have an affect on an entire
5 community whether those services still exist, because they have a particular vulnerability to those economic circumstances. So when they go out of business they go out of business for the whole town, so I think in particular alliance on that submission, I think the focus should be on the particular vulnerabilities of those small business that are not, as Mr Baker was talking about, covered by the federal
10 system because they're not really the matter of this application.

COMMISSIONER ABEY: Yes, thank you for that, Mr Dilger. I wouldn't want it to be understood that my comments are necessarily supporting or endorsing the VAC submission, but my point is - and I think you've picked it up, is that the numbers
15 aren't necessary the major criteria, it's the impact on both the employees and the employers who are affected by this decision, which is the major consideration.

PRESIDENT LEARY: And it's a flow-on effect in this industry because part of the submission talks about the impact of the financial downturn on the dealerships,
20 which of course are bigger than the small garages, but there is a flow-down effect on that. Right. Nothing else that you can had on - - -

MR DILGER: If I may, President, both my learned friends have made reference to skill levels of the Tasmanian workforce and possible implications. I think this is
25 actually a really significant public policy issue and what we found back in that point in 2008 where Tasmania's unemployment got to 3.9 per cent, was it that Tasmania ran out of skilled labour, that businesses were reporting they were unable to recruit appropriately skilled people. At the same time as unemployment fell to 3.9 per cent the participation rate went up slightly, but we only had a pool - a reserve pool of
30 about 13,000 people looking for work.

There is, according to research, another 30,000 people in the Tasmanian community who might work, if the situation was attractive to them, but for various reasons they don't work and they're not in the labour market at the moment. And if we take all
35 that's been said we are going to see an increase of unemployment back up to something like about 7 per cent in Tasmania. Again, historically that's not a bad number, but the indications are there is going to be, for most people on unskilled workers, because as I said before employers will keep on their skilled workers in preference, they will hoard their labour in anticipation of the upturn, and the skilled
40 workers will end up accepting perhaps lower wages and staying employed. But this is not an issue of the price of labour, this is actually an issue about skill levels. And the public challenge and the challenge for employers in Tasmania is to look at this group of 30 or 40,000 Tasmanians that are sitting there without appropriate skills, and working out how they can give them those skills and then make them - as time
45 improves them.

At the moment, if we do have an upturn late this year and into next year, we're not going to have the skilled labour to service it. So by reducing wages, and talking about skilled labour, we're actually being counter-productive because we need those people wanting to be in the workforce and we need them doing the training and the skills to put them into the workforce, and a key part of that is what wages are then offered to them and what training and opportunities are made to them. Those, I think, are the far more significant issues than whether we add 12 or \$24 a week to the wage rate. Thank you.

10 PRESIDENT LEARY: Yes. You haven't recorded an appearance. Do you want to make a submission?

MR MALLETT: I have. Madam Chair, I did ask that – the ladies in the front, that depending on the arguments put whether I may make a submission and I've said - - -

15 PRESIDENT LEARY: You will have to come up to one of the microphones I think - - -

MR R. MALLETT: Yes.

20 PRESIDENT LEARY: - - - and announce an appearance.

MR MALLETT: My name is Robert Mallett and I appear for the Hairdressing Federation of Tasmania.

25 PRESIDENT LEARY: Thank you.

MR MALLETT: And whilst I do appear before the Hairdressing Federation of Tasmania, I also hold the position of Executive Officer of the Tasmanian Small Business Council. I mention that because all hairdressers in Tasmania normally come under the broadly recognised definition of small businesses, which is that of 20 employees or less and of course it's changing now depending upon the political sector. Of those small businesses across the country, and Tasmania is no different to that, there is an average of three and a half employees per business and that does not include the owners or owner of the businesses that work in it. So we can – and in Tasmania there are approximately 30,000 small businesses. Whilst I can only speak fairly authoritatively on the hairdressing sector when it comes to those who may or may not be – come under the federal system, surveys and questionnaires that I have conducted for my organisation indicate that approximately 10 to 15 per cent of businesses come under the federal system, which means to say that all other hairdressers in Tasmania and salons and employees are in fact under the state wage system.

45 One of the other concerns is that whilst we talk about the low paid workers most – the vast majority of people within the hairdressing sector and beauty sector are fully qualified – tertiary qualified people. They hold a trade certificate and so their wages are usually around – they currently sit around the \$639 per week mark and whilst

there is some sympathy for those who may be on the \$540 mark for in some sectors, the wage ends up flowing on to our people who are currently being paid what others don't always consider it being low paid. Madam President, I think you talked to – you mentioned about compliance and in some respects we agree, although there is no
5 doubt about it the employer organisations, such as mine and my colleague at the end, do our absolute level best to ensure that our raison d'être is that everybody does comply because it's highly anti-competitive for those persons that don't, but I take your comment that there are some who are unattached to any industrial organisation at all who probably don't comply and we don't condone that in one way shape or
10 form.

And similarly, the impact, as Commissioner Abey has talked about in reference to the service station sector, that there's no doubt about it, across the areas that I deal with also in the Small Business Council, and that's a considerable amount of small
15 retailers and they are hairdressers amongst a range of other industries, the impact is significant. And if you have got five, six or seven employees, which might be slightly larger than national average for a small business, that ends up providing several hundred dollars worth – up to \$1000 worth of increased wages a week where it's in today's current economic climate it is difficult to increase prices to reflect
20 those additional costs that are being imposed upon those employers.

I'd also like to make a point that I think one of the areas that we focus on strongly is that it is a minimum wage, and that employers still, whether for over-award wages, do bargain considerably with their employees. There's no doubt of that. Mr Cocker
25 has talked about a labour shortage or a skills shortage and in the sector that I'm representing here today, there is no doubt about it, there is a shortage of skilled labour as in hairdressers and beauticians, etcetera, within this state and also nationally to be able to fulfil the amounts of positions there are, but whilst there is – it is a minimum wage at \$639 per week, I know of a number of salons who, for
30 whatever reason, have chosen to pay additional wages to their employees. They - - -

PRESIDENT LEARY: The market, I guess.

MR MALLETT: I beg your pardon?
35

PRESIDENT LEARY: The market determines - - -

MR MALLETT: Yes, it's the market. In some places, metropolitan areas, they're doing reasonably well. They can afford to keep their employees and I don't – whilst
40 I don't know that I agree with labour hoarding, as has been the expression that they're doing, I think it's more a case of recognising the skills, the loyalty and the ongoing need for those people within their business, but I think also there are many regional areas in Tasmania where I have members, who aren't doing so well. That it's not major metropolitan areas where people with reasonably high wages who are
45 their major clients, they're rural and remote regions where a remote salon has difficulties. For them to have a wage case increase at this time would be difficult, there's no doubt about that. But where they have options to be able to increase their

wages, they – most of them do negotiate with their staff to increase them, so I think that that should be taken into account. And with your leave, I think that will do unless you have any questions for me.

5 PRESIDENT LEARY: Is your submission on behalf of the Hairdressing Federation or on behalf of the Small Business Council?

MR MALLETT: It's the Hairdressing Federation.

10 PRESIDENT LEARY: Just the Hairdressing Federation.

MR MALLETT: I'm specifically appearing - I just use that because of my skills in the – the experience I have in the broad small business sector.

15 PRESIDENT LEARY: No. No, that's fine, thank you. You're not aware then of how many of your members would be paying of the award? Is it more than less or
- - -

MR MALLETT: No. No, it would be less rather than more.

20

PRESIDENT LEARY: It would be less. Right. Yes.

MR MALLETT: And employers of choice, good quality employers always look after their staff extremely well because they understand the value of those people.

25

PRESIDENT LEARY: Yes.

MR MALLETT: There are some who probably don't understand as well as they should or probably don't understand the system as well as they should, and that's
30 where it has a high level of churn within employees, but there are – good quality employers do that and we make an example of those, as a positive example - - -

PRESIDENT LEARY: Yes.

35 MR MALLETT: - - - of those within our industry so that we show, you know, leadership.

PRESIDENT LEARY: But it's more the minority than the majority as far as you're aware?

40

MR MALLETT: A small minority, it is, because I have - - -

PRESIDENT LEARY: Yes.

45 MR MALLETT: As you alluded to, I still have trouble enough to getting everyone to comply with the award as it is.

PRESIDENT LEARY: Yes.

DEPUTY PRESIDENT SHELLEY: Mr Mallett, sorry, you might have addressed
this and I didn't pick it up; the range is between no increase, as argued by the TCCI,
5 and 4.5 per cent as argued for by Unions Tasmania. Do you have a position?

MR MALLETT: We would argue that there would be increase, but at the same time
an education campaign that should encourage employers to work with their
employees to discuss those arrangements within the enterprise.
10

PRESIDENT LEARY: Towards enterprise bargaining?

MR MALLETT: Towards an enterprise bargaining.

15 PRESIDENT LEARY: Yes.

MR MALLETT: And whilst it doesn't need to go down the roller, because at the
moment they are unable to down the road of a formal collective agreement, because
they are partnerships and sole traders - - -
20

PRESIDENT LEARY: Yes.

MR MALLETT: - - - there's nothing g to preclude them from paying more than the
award with their employees to demonstrate to – as I say, loyalty and commitment to
them in their business.
25

COMMISSIONER ABEY: Mr Mallett, can you give us any indication of the impact
on employment in the hairdressing sector over the last 12 months, specifically has
the global financial crisis had any impact at hairdressing level and if so, what?
30

MR MALLETT: It's not been consistent overall. There have been some of my
members who have struggled a little, but I can assure you also that, whilst it might
not help the case, there are some who have done quite well, because there is no doubt
about it, in a global downturn the sorts of things that sell better is chocolate, cordial
and people going to have their hair done, because in - - -
35

PRESIDENT LEARY: And skirts, the hems go up, don't they?

DEPUTY PRESIDENT SHELLEY: It makes them feel better.
40

MR MALLETT: In fact, it's about people walking into a salon feeling like \$1.50
and walking out feeling like a million dollars and that's what good quality businesses
do. So - - -

45 MR BAKER: I must go more often.

MR MALLET: - - - yes, and Phil probably should go there from time to time, go more often, but no - - -

PRESIDENT LEARY: Yes, maybe we should all go there.

5

MR MALLET: So it's mixed, there's no doubt about it. I have some suburban salons who are struggling, but I have others that are doing very nicely thank you very much, and they're the ones that have chosen to pay extra, because they recognise the value of the people that they have working for them.

10

COMMISSIONER ABEY: Thank you for that.

PRESIDENT LEARY: No other questions? Right, thanks, Mr Mallett. Mr Cocker, did you want to make any comment on Mr Mallett's submission?

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MR COCKER: No, thank you.

PRESIDENT LEARY: Mr Dilger? No?

20

MR DILGER: No, thank you, Ma'am.

PRESIDENT LEARY: Mr Baker?

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MR BAKER: No, thank you.

PRESIDENT LEARY: All right, thank you. I think that's all we need to deal with. Thank you for your submissions and certainly the written submissions have been very helpful to us. We shall reserve our decision. Just one moment, the wage fixing principles, is there nothing more to be said?

30

DEPUTY PRESIDENT SHELLEY: RIP.

PRESIDENT LEARY: No one wants to say another word? Okay. Right, the - - -

35

MR BAKER: Do we have a bonfire?

PRESIDENT LEARY: Pardon?

40

MR BAKER: Do we have a bonfire?

PRESIDENT LEARY: No. RIP, I think is the correct expression. Thank you. We will reserve our decision. Thank you.

45

MATTER ADJOURNED at 11.26 am INDEFINITELY

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