

**IN THE TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

**T. Nos 665 and 691 of 1987**

**IN THE MATTER OF** applications by the Tasmanian Public Service Association and the Tasmanian Teachers' Federation to vary nominated public sector awards and to vary the Teaching Service (Teaching Staff) Award respectively to increase salaries to reflect movement in Consumer Price Index for Hobart for March, June, September and December quarters of 1986

**and**

**T. No 675 of 1987**

**IN THE MATTER OF** an application by the Association of Professional Engineers, Australia (Tasmanian Branch) to vary the Professional Engineers Award to increase salaries to reflect movement in Consumer Price Index for Hobart for March, June, September and December quarters of 1986

**and**

**T. No 712 of 1987**

**IN THE MATTER OF** an application by the Tasmanian Trades and Labor Council for variation of all public and private sector awards and agreements to increase all wages, salaries (and allowances) by 6.7% and to vary the Principles to conform with the decision of the Australian Conciliation and Arbitration Commission.

**FULL BENCH**

PRESIDENT  
DEPUTY PRESIDENT  
COMMISSIONER KING

**HOBART, 26 March 1987**

**TRANSCRIPT OF PROCEEDINGS**

(CONTINUATION)

MR JARMAN:

May it please the Commission, we are mindful of what the national wage Full Bench had to say on page 32 of Print G.6800 between placita d and e, and I quote:

"Not to grant an increase, notwithstanding experience of what would follow from an uncontrolled situation, would inevitably, in our view, destroy the immediate possibility of a co-operative community effort to improve Australia's economic performance. The workforce has a crucial role to play in that effort."

I there end the quote.

Inherent in our submissions that this Bench adopt the Federal decision, is our non-opposition to the awarding of a \$10 per week flat rate increase to all State award employees. Of course, the awarding of such increases will depend on the unions concerned giving their commitments as prescribed in the new package.

PRESIDENT:

Are you happy for the Commission to arbitrate on superannuation as well?

MR JARMAN:

I'm sorry, I'm not quite sure I understand the thrust of that question, sir.

PRESIDENT:

Well, does the new ...

MR JARMAN:

I have read the Principles and I also understand that a certain piece of legislation has recently been amended.

PRESIDENT:

Well, that doesn't answer my question.

Don't the new Principles envisage, in last-resort circumstances, the Commission arguing superannuation up to 3% over a period of two years?

MR JARMAN:

Well, with respect, sir, we have ...

CW/BC - 26.03.87

PRESIDENT - JARMAN

PRESIDENT:

Arbitrating ...

MR JARMAN:

Yes. I understand what you're saying. We have, in fact, in our submissions made it quite clear that, with some reservation, we are suggesting that this tribunal pick up the Federal Commission's decision, and I think that should answer your question.

PRESIDENT:

Yes.

MR JARMAN:

And as far as superannuation claims go, and I'm not aware that there are any before this Commission at the moment, we would certainly make our position clear on particular claims as they arise from time to time.

If the Commission pleases, our view in this matter is consistent to the attitude we have taken in State wage case matters since September 1983. That is, we recommend the adoption of the national wage decision.

As indicated, our submission to the national wage Bench differs in substance to our recommendation in this matter. However, we believe, as previously indicated, that a common approach to centralized wage fixing is critical if we are to turn this nation's economy around. If the Commission pleases.

PRESIDENT:

Yes, thank you, Mr Jarman.

DEPUTY PRESIDENT:

Mr Jarman, whilst you're on your feet, you gave us an exhibit, G.2, which is a comparison of 'International Consumer Prices' and you made some comparisons between the figures for Australia and the figures for some of our major trading partners.

Could you explain to me why, given those figures in your exhibit, as I understand it, you can go to Japan, for instance, which is one of the countries being compared, and it will cost you anything from \$5 to \$10 for a stubby of beer and yet you can get



DEPUTY PRESIDENT: it much cheaper than that in Australia, even allowing for differences in exchange rates.

MR JARMAN: Well perhaps, sir, not having been to Japan and bought a stubby of beer ...

DEPUTY PRESIDENT: Neither have I, and I'm not likely to at that price.

MR JARMAN: ... I'm not an expert on the subject, but I would presume that the wages over there are relative to the price of things. I can only defer to my colleagues here to answer your question in any detail.

Perhaps I could come back to you at a later date on that if you desire ...

DEPUTY PRESIDENT: Yes. On a serious note, and that wasn't anything but serious either, but aren't you comparing Consumer Price Index figures as to movements over specific periods of time and, in reality, if we were to go back to what the base is, we would find that the bases are different, and there could arguably be some excuse for minor falls in the price movement if you are starting from a base where a beer is \$10.

MR JARMAN: Yes, I understand what you're saying. If I could come back to you later this afternoon.

DEPUTY PRESIDENT: Yes. I'd find it interesting.

MR JARMAN: If the Commission pleases.

PRESIDENT: Thank you, Mr Jarman. Mr Westwood?

MR WESTWOOD: Thank you, Mr President. I'd like to commence by indicating that on behalf of the Minister for Public Administration and the other controlling authorities which I represent, the general submissions of Mr Jarman are thoroughly supported and adopted and should be read into my submissions.

You will have noted that the points

CW/JR - 26.03.87

PRESIDENT - DEPUTY PRESIDENT - JARMAN  
- WESTWOOD

MR WESTWOOD:

made by Mr Jarman clearly outline the Government's view of the need for an orderly co-ordinated national system of wage fixation and that despite the stance which had been taken at a national level during the process of developing an orderly system.

What was inherent in the Government's submissions and in fact inherent in all other Government submissions - State and Federal - was the need for restraint to be exercised in the wages and salaries area.

That the Tasmanian Government's view of the necessary restraint was not adopted is now history, and a different model for wage restraint has been proposed.

So far as the Minister, as an employer is concerned, and the other controlling authorities which I represent, that national package should be adopted in this State. Its adoption will provide the most practical basis for uniform wage movements between employees covered by Federal awards and awards of this Commission.

Similarly, as other State commissions adopt the new system, the uniformity of treatment will extend to employees in all other States.

PRESIDENT:

How can you say that, Mr Westwood, when the very decision that gave rise to this new package indicated that it was not expected that increases would be uniform, as between groups of people?

MR WESTWOOD:

I wasn't suggesting that the rates themselves would be uniform; the method of determining the rates would be uniform; the system would be uniform.

PRESIDENT:

I see. Thank you.

MR WESTWOOD:

To do otherwise would put at risk the whole centralized wage fixing system, with its attendant consequences of

CW/JR - 26.03.87

PRESIDENT - WESTWOOD

MR WESTWOOD:

leap-frogging, of continuing industrial action to achieve parity, attendant settlements which will destroy the nation's already shaky economy and oppose even harsher prospects with a maintenance of high employment levels.

The claims of the T.P.S.A. and the T.T.F., supported by the Secondary Colleges Staff Society, put at risk any centralized system and I was at pains to point this out, as you will recall, in the matter which has been referred to this Bench.

The notion of full, automatic indexation has been rejected at a national level and we submit once again, it should be rejected at this level.

The pressure for a flow-on to the remainder of the public sector to, in fact, the private sector would be most destabilizing and from an industrial relations point of view and in respect of the provision of public services, and commercially, it is a situation which this Commission should not promote or give any assistance to.

This sectional claim, going as it does, to a proportion of the public sector work-force, should be rejected at this State level.

Sir, I was mindful of a couple of comments which were put to the previous advocates earlier and I have no doubt that some of them will be put to me, but you did ask of Mr Vines what he thought 'substantially part heard' was in terms of the Principles.

From our point of view, a substantially part-heard case would require both parties to have made their submissions, that certainly the call of the card isn't good enough and certainly the submissions of one party only could hardly be regarded as being a substantially part-heard



MR WESTWOOD:

matter.

Mr Henderson made reference to the Bench of the need for a special conference to be convened on market-rate surveys. I would submit that such a conference should not be commenced in this jurisdiction until a similar matter was dealt with at a national level to ensure that there was a uniformity of approach.

There was another matter which I wanted to go to and I hope I can find it. No.

In respect of the Principles as tabled by the T.T.L.C., I would like to draw the Commission's attention to the second page, 'WAGE ADJUSTMENTS First Tier' item (b), and because of the manner which I was involved earlier, going to claims of P.S.A. and the T.T.F., I would just like to draw to the Commission some attention to the first couple of lines of item (b):

"The Commission will convene a conference of the parties to this case in October 1987 ..."

Now, I am concerned that that could be taken as meaning that, notwithstanding anything that might have occurred nationally, this Commission would have to do it and I believe it would be appropriate for this Commission to follow a national wage decision of this nature. When I say 'follow' - to consider the matter following the national wage case decision in respect of item (b) in the 'First Tier'.

For the information of the Commission, I have some statistical, if you like, financial information to give to you. A \$10-a-week increase across the State public sector to those covered by State awards would amount in one full year to \$13 million approximately.

CW/JR - 26.03.87

WESTWOOD

PRESIDENT: When you say State awards, do you mean awards covering State employees or awards of this Commission?

MR WESTWOOD: All employees covered by awards of this Commission ...

PRESIDENT: Thank you.

MR WESTWOOD: ... whether legally or otherwise.

PRESIDENT: I was hoping that we would get some reference to the phantom army, even if it was ...

MR WESTWOOD: I had to give you the opportunity, Mr President.

PRESIDENT: Yes, thank you.

MR WESTWOOD: Every 1% awarded, however done so, would result in an increase to the same group of people of something of the order of 6.3 million for the full year.

It's a simple calculation to extend that 6.3 in respect of the 10% claim of the T.T.F. and the T.P.S.A. to \$63 million rather than the \$28 million which we've seen in the media ... the press; that being of course the fact that, as the Bench has indicated on a previous occasion, the prospect of such a claim being successful in respect of the P.S.A. and the T.T.F. would undoubtedly move other sectors of the State public sector to be granted a similar increase.

So with those comments, Mr President, I conclude.

DEPUTY PRESIDENT: Mr Westwood would you mind ...

PRESIDENT: Thank you, Mr Westwood.

DEPUTY PRESIDENT: The new Principles proposed say that in the second tier (it appears on the second page of Exhibit T.T.L.C. 1.). Second tier (b) says:

"(b) Subject to agreement

GM/BC - 26.03.87

PRESIDENT - DEPUTY PRESIDENT -  
WESTWOOD



DEPUTY PRESIDENT:

between the parties concerned, and processing of such agreement in accordance with appropriate principle, increases not exceeding 4% ceiling may be approved..."

How would you see that working in fact, in relation to the public sector?

MR WESTWOOD:

I think Mr Jarman ... there was a discussion between the President and Mr Jarman on that this morning.

DEPUTY PRESIDENT:

I thought you represented the employer?

MR WESTWOOD:

I do, and I think Mr Jarman covered it quite well, but the union applicants have the opportunity to make whatever claims they think are appropriate. The public sector employers (whoever they are) will consider those on the merit, and if they're not able to reach agreement, obviously it will be arbitrated before this Commission.

DEPUTY PRESIDENT:

But I understood (and you will correct me if I'm wrong) him to say that if claims are lodged with this Commission, they will be processed. That really goes to (c), doesn't it, of the second tier, that failing agreements other things may happen. But I'm dwelling, quite deliberately, on (b), and just trying to get an appreciation of what will happen in relation to the second tier so far as the public sector is concerned because ...

MR WESTWOOD:

Well, I don't think you can read any one of the items in the second tier - category (a) to (d) - in isolation; they run together. It's a package of conditions, I would have thought. There are different steps that may be gone through.

DEPUTY PRESIDENT:

But, as part of any package, would you see that the (and Mr Jarman read to us a quote from page 32 of the

GM/BC - 26.03.87

DEPUTY PRESIDENT - WESTWOOD

DEPUTY PRESIDENT:

National Wage Case decision between d and e. It says, just to remind you:

"Not to grant an increase, notwithstanding experience of what would follow from an uncontrolled situation, would inevitably, in our view, destroy the immediate possibility of a co-operative community effort to improve Australia's economic performance. The workforce has a crucial role to play in that effort."

My question is, would you see that the employer too has a crucial role to play in that effort if the system is to work equitably?

MR WESTWOOD:

Well, yes, I've got to concede that. I mean, the Principles refer to the need to reach agreement, under (b). That can hardly be agreement on the part of just one party. There must be two parties.

DEPUTY PRESIDENT:

Yes, but my line of questioning arises, I must say, from the previous submissions today and earlier on from the public sector unions who have portrayed a picture where, to my mind, they don't see that they have much chance of successfully negotiating their way through the second tier, and I was hoping that you could dispel any such fear because, at the very least, if they have to go to the next process (and I don't pretend to understand all the Principles in detail) but it appears to me that, at the very least, the penalty might be a later operative date.

MR WESTWOOD:

Well, that's quite so, but I thought Mr Jarman was quite elaborate on that particular matter, and clearly indicated the fact that the organizations, if they make applications, will be dealt with on their merit. I don't think you can do any more than that. But to give a

GM/BC - 26.03.87

DEPUTY PRESIDENT - WESTWOOD

MR WESTWOOD: blanket `yes` now to whatever you want ... a blanket `yes` or `no` too I think would be most inappropriate. It's clear that the Principles provide the opportunity to take the matters through distinct phases.

DEPUTY PRESIDENT: Yes, but I was ...

MR WESTWOOD: If I could complete, for the unions to feel, because they haven't been told they can have 4% now, immediately, is a little bit (I suggest) jumping at shadows.

DEPUTY PRESIDENT: You've misunderstood me.

MR WESTWOOD: I hope so.

DEPUTY PRESIDENT: What I was really looking for and seeking is as to whether or not you are in a position to be able to assure this Commission and the parties that, at the very minimum, there would be a spirit of co-operation in meeting, hearing, discussing and working to see whether or not the Principles would allow a negotiated situation to be reached in relation to the second tier.

MR WESTWOOD: Well, that's what I say, I'm certain Mr Jarman answered that. He did say that claims made would be addressed on the merit.

DEPUTY PRESIDENT: But he's not representing the employer.

MR WESTWOOD: Well, certainly, that's what the employers will do. They'll treat all claims on their merit. If they deserve that sort of co-operation that you're espousing, they'll get it.

DEPUTY PRESIDENT: Thank you.

PRESIDENT: You don't think, Mr Westwood, that the language used in (c) will almost guarantee that there'll be no agreement under (b)?

MR WESTWOOD: I wouldn't like to say one way or

GM/BC - 26.03.87      PRESIDENT - DEPUTY PRESIDENT - WESTWOOD



MR WESTWOOD:

another at this stage. I'd like to see what was occurring in respect of the claims which are lodged. I think it would be most unreasonable to give any indication that one particular line will be taken on all of the claims which might be submitted under this Principle.

PRESIDENT:

You don't think that employers would read into (b) a suggestion that, 'Well, if we agree to more than 2% to operate from a date earlier than September 1987, we're silly. Because if we say no and take it to the Commission, the Commission has already indicated that it won't grant give more than 2% and it won't grant retrospectivity beyond 1 September 1987.'

MR WESTWOOD:

Well, there may be some employers who would take that view, but based on the merit, every employer would have to make his or her own decision.

PRESIDENT:

You don't think that might be the preferred position of the Government, in the circumstances.

MR WESTWOOD:

I wouldn't like to say categorically that the Government would, on every occasion, do what you're suggesting. It would be improper for me to try to do so. Mr Jarman has already indicated that every matter will be treated on its merits so far as the Government is concerned. So far as the employer is concerned that position will be adopted.

PRESIDENT:

Thanks, Mr Westwood. Yes, Mr Garnham.

MR GARNHAM:

If it please the Commission, I would like just to make two very brief points in relation to support for what has been said by my colleagues.

The Council of Advanced Education supports the continuation of a centralized wage-fixing system and believes it to be essential to the

GM/BC - 26.03.87

PRESIDENT - WESTWOOD - GARNHAM

MR GARNHAM:

continued industrial harmony levels that we have been able to achieve in Australia in recent years.

And given the funding base of the council, particularly the fact that over 60% of the employees of the council are under a Federal award, we believe it is essential and indeed important that the guidelines adopted by this Commission do not substantially vary from those adopted in the Federal Commission.

Otherwise we believe that internally within the Institute of Technology we will be faced with an inequality in an employment situation that would be hard to justify and, given the fact also as I mentioned, with the funding base we would not possibly be in a position to meet any variance in that, if the Commission pleases.

PRESIDENT:

Thank you, Mr Garnham, we understand your rather peculiar position.

Mr Abey.

MR ABEY:

If it pleases the Commission, the decision of the Full Bench of the Commonwealth Commission has the capacity to achieve one of two things. At worst, and the worst scenario is the potential to have labour cost increases of upward of 10% between now and January next year. If that is achieved then the decision will take the Australian economy out backwards.

At best, the new system will provide the necessary flexibility which, if managed properly, might enable it ... might enable us to develop a wage system more in sympathy with economic market forces.

Quite frankly, the numbers which fell from the Full Bench are simply too high. However, notwithstanding our grave reservations, we do not oppose this application save in respect of one aspect which I'll come to later. We do not oppose the application

GM/BC - 26.03.87

PRESIDENT - GARNHAM - ABEY

MR ABEY:

because we prefer to be positive. The previous indexation system was unsustainable and this proposed alternative, whilst frightening in many respects, represents a significantly better alternative to the system which we've hitherto been applied.

The key to the success of the new system will be twofold. Firstly, it will require an absolute and unqualified 'no extra claims' commitment from the trade union movement, and already we have grave concerns in this area as has been alluded to in passing by some of the advocates this morning. In particular, members of the Bench, I'd table a document which highlights these particular concerns.

PRESIDENT:

That will be T.C.I. 1.



MR ABEY:

The first page of this document is an extract from the 'Mercury' of 19 May, and it's headed up :

"Building unions bid to bust new pay deal"

And I don't propose to read through all of it, but to highlight certain aspects. And it says:

"Tasmania's two largest building unions have joined a national move to seek a \$52 wage rise instead of last week's national increase.

And they have warned of industrial strife if their demands are not met.

The powerful Building Workers Industrial Union and the Federated Engine Drivers and Firemen's Association will urge members not to commit themselves to the two-tier system until employers negotiate the wage rises.

The State secretary of the BWIU, Mr Max Cordwell, yesterday said the unions would pursue their claims irrespective of the outcome of the ACTU's special conference on April 2."

It goes on in the same flavour and the Bench can read it at its leisure, if it has not already done so.

The second document is a copy of a letter which has, in this past week, been served on a number of major companies in this State by the F.E.D. & F.A. And it says, somewhat crudely, in my submission :

"TO: COMPANIES AS ADDRESSED

Dear Sir/Madam,

This is a formal demand following the recent National

MR ABEY:

Wage Case. This Association seeks an undertaking from your Company to agree to implement the A.C.T.U. Claim, which is as follows :-

1. FIRST TIER

An immediate \$20.00 per week wage increase to operate as from the 10th of March 1987.

2. SECOND TIER

4% wage increase to take place from the agreed date."

Whatever that is.

"3. SEVERANCE PAYMENTS"

Unspecified.

"Furthermore any commitment that this Association may give will be very clearly defined so as to protect jobs, work practices and conditions."

I presume that means 'restrictive work practices'.

"We are prepared to enter into discussion on workplace efficiencies.

Your reply to these matters are required within seven (7) days."

And it's signed by Mr Challis.

When the time comes, in our submission, it will be incumbent on this Commission to specifically ask these two unions involved as to how their claims - which have been stated in the paper and by letter under the letterhead of the F.E.D.F.A. - how their claims sit with the wage fixation package.

And of course the same would apply to

CW/CD - 26.03.87

ABEY

MR ABEY:

any other union who publicly, in the interim period, adopts a similar stance.

The second critical factor will be the manner in which the second tier is dealt with. We must get it firmly in our minds that the 4% wage increase across the board is simply not there for the asking. The 4% is a ceiling, not an entitlement and the second tier must be justified in terms of improved efficiency.

Such examinations should not be limited to playing around with a few restrictive work practices. We now, at long last, have a chance for some innovative thinking in this area of wage fixation. The overriding criteria must be increased efficiency.

And I note with a degree of pleasure that the public sector is specifically included in the decision of the Commonwealth Full Bench.

We cannot afford to remain locked in to traditional and historical maxims and concepts. In our submission nothing should be sacrosanct. We must start to address new concepts which would lead to greater efficiency. Such concepts (and I throw this one in) as performance-related pay.

The manner in which the second tier is developed will be the make or break of this new system.

If I might, on this point, take up the the question of the Deputy President which was addressed to Mr Westwood as to why would not an employer simply having a look at the Principle say, 'Well, I'm not going to agree to anything, because it would be cheaper for us to wait until the deadlines or the earliest time frame which is available under arbitration.' I say, with respect, that employers will in the main not adopt that attitude



MR ABEY:

because it would be short-sighted. The whole spirit, the whole thrust of the restructuring Principle, is designed to improve efficiency.

Now if improved efficiency justifies a wage increase, then so be it, but it would be false economy to simply stick someone's ... put your head in the sand and say, 'We're not going to do anything until it's imposed on us,' because in our view the spirit of this Principle enables constructive negotiations to take place which will reduce costs, improve efficiency and that can be recognized in the pay packet.

I come now to the question of operative date, and for the first time the T.C.I. is opposed to any retrospectivity of the \$10 wage increase.

In our submission the \$10 should apply from the date on which the unions give their commitment to the new system.

Originally, as I understand it, this famous special unions' conference of the A.C.T.U. was programmed for a few days after the national wage decision, then it was suddenly delayed until 2 April, ostensibly to allow time for some of the more unruly elements of the trade union movement to soften up a few employers - have a practice run at the second tier to see if it works all right.

Whilst all this is going on, the A.C.T.U. - arrogantly, in our submission - sits back and in effect says, 'Well, we'll let you (that is the employer) know when we decide whether or not we'll accept the umpire's decision. And when we decide, you will pay it retrospectively to the 10 March. Thank you very much.'

Members of the Bench, it is grossly unfair and unreasonable that we as

MR ABEY:

employers apparently don't have the option of deciding whether or not we shall accept the umpire's decision. That's the prerogative apparently reserved to the union movement. If that is the case then it is not a prerogative which should be aided and abetted by this Commission.

It took 8 or 9 days for the T.T.L.C. to lodge a simple 1-page claim in respect of this matter. They may have had good reason for such delay, but if there was good reason then I suggest that that is the problem which should be sheeted back to the T.T.L.C., not the employers.

I'll table at this stage a letter from the C.A.I. to the President of the Commonwealth Commission ...

PRESIDENT:

T.C.I. 2

MR ABEY:

... dated 13 March 1987. And I'll read it into transcript - it says:

"On Tuesday 10th March the Full Bench in the National Wage Proceedings handed down its decision.

That decision introduced a new package of wage fixing principles and, subject to an appropriate no-extra claims commitment being given by unions, awarded a \$10 wage increase. Under the first tier principle, that increase is to operate from the first full pay period to commence on or after 10th March.

The prospective nature of this decision is consistent with the Commission's policy of not granting retrospectivity in national wage cases and in fact, the decision and the package itself, clearly indicates the Commission's opposition to retrospectivity.

MR ABEY:

The situation has now arisen where the trade union movement collectively, through the ACTU, has not been prepared to endorse the decision and begin the process of providing unequivocal commitments. In fact the national wage decision is now to be the subject of debate at a Special Unions Conference on 2nd April.

In these circumstances it is now clear that there will be a significant delay in the implementation of the decision, a factor which could not have been envisaged by the Commission and which is inconsistent with previous experience.

It is the view of CAI that employers should not be placed in the position of having significant retrospectivity imposed in the event the trade unions eventually consider the decision of the Commission to be 'acceptable'.

Against this background we request that the National Wage Bench be reconvened to hear immediate debate on the operative date of the \$10 wage increase. In our view the increase should only apply prospectively after the date on which a union provides an unequivocal no-extra claims undertaking and satisfies the Commission that it will process all claims in accordance with the principles."

Now, to date, the President has not responded to that request, but as you will see, the C.A.I. in the circumstances we've been faced with is making exactly the same



MR ABEY:

application that we are doing at this moment.

If the unions have a guaranteed operative date then they can, with immunity, take all the time in the world, whilst the employer must meekly sit back and await the unions' pleasure.

The method by which unions make decisions is none of our business. My personal experience is that unions, when it suits them, can make decisions instantaneously, and also on other occasions they can be ponderously slow. Again, when it suits their better interests.

As I say, how they make their decisions is for them to determine. However, should they choose to be unreasonably ponderous, as they clearly are being in this case, then they should not be able to do that in the knowledge of a guaranteed operative date.

One final point, if I may - and it's purely machinery - is that for some reason which defies any sort of logic, the Principles in the Full Bench decision are not numbered and the T.T.L.C. has picked up that fault and not numbered their application and, in my submission, the Bench if it picks up this application, should remedy that situation.

If the Commission pleases.

PRESIDENT:

Yes. Thank you, Mr Abey.

PRESIDENT: Mr Abey, if I could just pursue with you the same matter that I raised with Mr Westwood regarding item (b) and item (c) of 'THE PRINCIPLES' that are not numbered, under 'Second Tier', and I think that you yourself picked it up and said, 'Well, it doesn't necessarily follow', if I understood you correctly, that employers would reject (b) and go for (c) because it might be to their advantage.

Let's consider a suppositious argument, whereby an employer has been able to negotiate some improved efficiency arrangements and he considers that in terms of recompense for the employees, it's worth 4% and that's duly awarded. What happens if a short while after the unions run a case for inclusion in that particular award of supplementary payments?

MR ABEY: Well, they'd be in great difficulty because a supplementary payment is subject to the second tier.

PRESIDENT: That's exactly my point.

MR ABEY: And they'd be out of ... they'd have no room to go.

PRESIDENT: Then would we be faced with a situation where some employers who hadn't been able to negotiate a satisfactory efficiency arrangement might have to pay supplementary payments under that award, and others who had been able to enter into some meaningful negotiations would either claim to be excluded, or automatically be excluded?

MR ABEY: Are you talking about a situation of one award with multi-employers?

PRESIDENT: Yes.

MR ABEY: Well, we take a simple case of one award applying to two employers.

PRESIDENT: If you like.

MR ABEY: One employer goes ahead and

CW/JR - 26.03.87

PRESIDENT - ABEY

MR ABEY: negotiates a satisfactory arrangement and so far as efficiency is concerned, and there is an increase of 4% granted, in my submission, that increase would only be applied to that company, not the other one.

PRESIDENT: Yes, that's right. So, we could have a situation where an award - I'd rather use an example - where an award applies to a dozen companies, if you like.

MR ABEY: Right.

PRESIDENT: Where some companies covered by that award be required to make supplementary payments, other companies wouldn't because they had already entered into an arrangement whereby, for the same cost, they were able to get greater efficiency.

MR ABEY: Well, I think that underlines the point I'm making, Mr President, is that employers should not just put their head in the sand. There may well be distinct advantages into going into this restructuring approach, rather than simply saying, 'Well, we're going to hang out for as long as we possibly can', because in the long run it's going to cost them more, conceivably.

PRESIDENT: Yes, that's very feasible, I guess, but would it mean in the result that this Commission would have to include in awards a whole list of exemptions covering employers who would not have to, say, either meet the supplementary payment figure in full, or not meet it at all?

MR ABEY: As I've said, nothing is sacrosanct, Mr President, and I say with absolute respect, that these new Principles aren't designed for the convenience or the tidiness of this Commission, the trade union movement, or organizations like ourselves. The work-load is going to increase dramatically, I suspect, but if that isn't for the greater good of the nation, then so be it and awards



MR ABEY: in 12 months' time, I hope personally, will bear little relation to what they are now, and if that is the case and it's made a positive contribution to the Australian economy, then that is good. I would envisage, for example, awards being - single employer awards - made.

PRESIDENT: In short agreements.

MR ABEY: Yes. But as I say, I don't think we can afford to get locked up into what we've applied for many years because if we do, we'll be thinking in parallel lines - we'll be trying to apply an old mentality to a new concept and it won't work.

PRESIDENT: Yes, thank you, Mr Abey.

DEPUTY PRESIDENT: Mr Abey, I know you'd be perhaps disappointed if I sat here and didn't ask some questions.

MR ABEY: I would be, yes, Mr Deputy President.

DEPUTY PRESIDENT: Mr Abey, what should the Commission do in the event that an employer sat down with the unions at the enterprise level and negotiated changes in work practices and improved efficiencies on large scale, and agreed with the union representatives that it was worth considerably more than 4%, and if they trotted along to this Commission and asked for that settlement to be ratified by us? How should we deal with it, in the light of these Principles which are proposed?

MR ABEY: Well, as I understand it, there is a provision in the Principles for the anomalies conference to deal with such cases in special and isolated circumstances. Now, what that means is anybody's guess but, in short, if it came before a Commissioner sitting alone, you should reject the agreement if it exceeds the 4% tier. That's the constraint that's been imposed.

We think it's too high.

DEPUTY PRESIDENT:

Well, maybe you'll intervene in such cases and we may well - I think we will have - a significant case along those lines in the not-too-distant future.

MR ABEY:

Well, if it's the same case that I'm thinking of, we have already intervened in that one, Mr Deputy President.

MR LENNON:

Let us all in on the secret.

DEPUTY PRESIDENT:

Yes. No, it's a real problem. It has to be addressed and the Commission has to consider as many views as possible before it picks up these Principles, because obviously we all need a system which will work satisfactorily, not only from the economy's point of view, but from an industrial relations point of view.

MR ABEY:

I'm not pretending it's easy, Mr Deputy President.

DEPUTY PRESIDENT:

Well, thanks for your .... Before you sit down, in relation to your submission in relation to operative date, I've noted what you've said, of course, but I would point out to you and then ask for your reaction, that the present claim is framed under existing Principle 1, which says in (b):

"The Commission expects ..."  
(and I'm talking about this Commission as well as the Federal Commission of course)  
"The Commission expects that decisions on national wage adjustments will be made to enable adjustments to operate from 1 January and 1 July."

Well, here we are a long way into March and the suggested operative date is 10 March and also, this Commission, to my recollection, has never awarded the date of decision of its State Wage Case following the handing down of National Wage Cases. It's always awarded some retrospectivity.

CW/JR - 26.03.87

DEPUTY PRESIDENT - ABEY - LENNON

DEPUTY PRESIDENT: Now, read in conjunction with the requirements of Principle 1, what's your comment?

MR ABEY: Existing Principle 1?

DEPUTY PRESIDENT: Existing Principle 1.

MR ABEY: I've always been in a dilemma. In my view, this particular case is not being run under existing Principle 1, but I don't want to get into a deep philosophical argument on that, because quite clearly, all existing Principle 1 demonstrates is the folly of anyone trying to predict too far ahead.

Now, when that decision was made back in June last year (I think it was June last year) that a decision should be made so as to apply, so far as possible, from 1 January and 1 July each year, that might have seemed like a good idea at the time, but it quickly developed in the ensuing months and quite frankly, I think even the A.C.T.U. conceded that that was totally unrealistic.

Everyone knew that the national wage decision was going to go well into February and into March, and there was no great panic on in the trade union movement - because in my mind they recognized the reality of the economic circumstances - meant that original objective of 1 January could not responsibly have been met.

Now, I take your point that this Commission has never awarded a different operative date, or has always awarded some retrospectivity. I emphasize that we have the same submission, or attempting to put the same submission before the Commonwealth Commission.

But in any case, on merit, we say that the circumstances are totally different. The trade union movement, in my submission, is treating the Australian community with absolute



MR ABEY:

arrogance and contempt, when quite clearly, they postponed the original unions' conference as a sop to the building unions to enable them to go and try and soften up the employers, knock them over for 4% in the second tier - so they'll think the system's okay - and then they will come into line.

Well, they ran into a brick wall apparently when they met with the building employers this week and they got knocked back and they didn't like it, so they are going on strike on Monday, so we read in the Press, and from all reports - listening to Mr Weaven of the A.C.T.U. yesterday morning on the air - the A.C.T.U. are endorsing that action.

Now, we believe that's an arrogant approach; it's an approach which is inconsistent with the proper running of this Commission and I don't believe it's incumbent on this Commission, any other Commission, or the employers to sit around meekly and await the machinations of the trade union movement in what I see as a fairly cynical exercise.

DEPUTY PRESIDENT:

One more small question, Mr Abey. What's your comment to the hypothetical situation where a group of employees are in a service-type industry as against a production-type industry, and let us presuppose from the point of view of the argument that not only do they have a difficulty at the best of times to prove increases in efficiency and 'improved productivity', but presuppose that they've already had their work practices closely examined and improvements made to the maximum extent seen to be possible.

DEPUTY PRESIDENT:

Now, if they are already working efficiently, don't have any (as you say) restrictive work practices, are working hard, honestly, and producing a good result for the employer, what, if anything, is their prospects in relation to the second tier?

MR ABEY:

Mr Deputy President, I emphasize again that the 4% is a ceiling, not an entitlement. It is not there for the asking. The Full Bench made it clear that it will not be applied uniformly, as to quantum or as to operative date.

And the facts of life are that there may well be groups of employees who do not get 4%, or anything like 4%, for some considerable time.

Now, that may have some social consequences as to inequality et cetera. I suggest it is no worse than the existing situation whereby truck drivers in the oil industry are on a 35-hour week, and have been for many, many years and enjoy wage rates probably fifty or so percent higher than their counterparts driving similar trucks outside the industry.

DEPUTY PRESIDENT:

Mainly by agreement, I'll guarantee.

MR ABEY:

Absolutely, absolutely. But that is a feature. We're not one great, equal mass out there. The laws of supply and demand will determine that in any event.

So far as the service sector is concerned, I also made my submission that nothing is sacrosanct, or shouldn't be sacrosanct, and we shouldn't just be looking at work practices in order to obtain efficiency. We should be looking at the whole raft of possibilities of improving our system; and I threw out, for an example, the concept of

CW/JM - 26.03.87

DEPUTY PRESIDENT - ABEY

MR ABEY:

performance-related pay.

Now that, if people are paid by performance and rewarded appropriately, it would mean that people doing the same sort of work, but one doing it better than the other, would be rewarded appropriately. Now I see nothing wrong with that. In fact it's a terrific idea. It encourages people to perform, and that's what we're all about.

DEPUTY PRESIDENT:

But what I'm saying is, that isn't it possible that those who have been slack are going to be rewarded for ceasing some of their slackness, and those who have been conscientious and hard-working, who perhaps have been the model to be compared by the others who have been slack, are not going to be able to enjoy any wage increase by virtue of the fact that their efficiency has prejudiced them?

MR ABEY:

I concede that there's substance in what you say there, Mr Deputy President, and I've no doubt that that is in the minds of organizations such as the P.S.A. and the Professional Engineers' in their somewhat qualified submissions - or lack of enthusiasm for this new system.

I can't walk away from that. That's always been the case, and there's nothing that we will do will make the slightest bit of difference.

Take the superannuation debate: The A.C.T.U. put up this concept to superannuation and said, 'Our aim is to get everyone on superannuation.' The Full Bench and the A.C.T.U., I think, said the first people we should look at are the 'have-nots', those who haven't got any. What happens? They go and knock off the employers that have historically been vulnerable, who have got excellent superannuation schemes in place - they go and knock them off first and get the runs on the board.

CW/JM - 26.03.87

DEPUTY PRESIDENT - ABEY



MR ABEY: That's the cruel facts of life in a market economy, I guess. I guess the question you've got to ask is, is the alternative any better? And for that reason that is why I'm saying that we must look beyond this simple, trendy, word - restrictive work practices. We've got to look at the whole raft of possibilities.

DEPUTY PRESIDENT: We could probably spend a lot more time on debating that very thing, but thank you for your answers.

PRESIDENT: Do you think performance-related payments would be appropriate for traffic police and parking meter attendants, Mr Abey?

MR ABEY: I thought you were going to say 'Industrial Commissioners', Mr President.

PRESIDENT: No, we'd be fearful of your answer there.

Yes, thank you, Mr Abey.

MR ABEY: Frankly, I doubt it. Seriously answering your question, I'm not saying it's something that's appropriate for every area, but it certainly is in some.

PRESIDENT: Thank you, Mr Abey.

MR JARMAN: Before my colleagues to my right get to their feet, perhaps it might be an opportune time to advise the Deputy President about his \$15 Japanese stubby.

PRESIDENT: It's gone up \$5.00.

DEPUTY PRESIDENT: What time was that?

MR JARMAN: Has it? It was ten to fifteen dollars.

I am advised that there are a number of factors which could set such a price, and having consulted with a number of the more seasoned world travellers in the audience here

CW/JM - 26.03.87 PRESIDENT - DEPUTY PRESIDENT - ABEY - JARMAN

MR JARMAN:

today, I am advised that culturally speaking, Japanese are not renowned beer drinkers, so perhaps part of the excessive price for a stubby of beer in Japan is simply put down to the law of supply and demand.

Secondly, you would be aware, Mr Deputy President, that during our submission we mentioned the Australian dollar and the fact that it has depreciated by some 40% since 1983 and, Mr Deputy President, perhaps it may have been more appropriate if you'd have bought your stubby in 1983 when the Australian dollar bought 210 Japanese yen - and it would have been a cheaper beer at that time, as well.

PRESIDENT:

It would be stale now though.

MR JARMAN:

Possibly so, but that depends, I suppose, if you are one of those people who put the cap back on.

But now I'm informed, Mr Deputy President, that the Australian dollar is worth 100 yen, so that will buy you about a fifth of the beer that you would have drank in 1983.

So, perhaps, the other matter which you related to was Exhibit G.2. There are, I am advised, a number of goodies which are placed in a basket. The same basket is used by all the O.E.C.D. countries and the variance that we are getting in the Consumer Price Index is the variance when the price of these goods has been measured over a period of time. So it doesn't relate to the base index, it relates to a period of time over which those prices have moved.

If the Commission pleases.

DEPUTY PRESIDENT:

Thank you.

PRESIDENT:

Mr Lennon.

MR LENNON:

Thank you, Mr President.

CW/JM - 26.03.87

PRESIDENT - DEPUTY PRESIDENT - JARMAN  
- LENNON

MR LENNON:

All I'd say about the 'basket of goods', of course, is the reason that it varies from one country to another is because the basic units of life and tastes vary from one country to another as well. And we are great meat eaters in Australia, but they are not in Japan - so on and so forth. So really it's irrelevant, all this nonsense that he's gone on with, with half his submission.

And the important part about the Government's submission is that they do accept that the new system ought to be put into place and is justified at this time, as do the employers.

The point that I really want to come to is the point made by Tim Abey with respect to the operative date. And I simply say that there is no retrospectivity. The employers are well aware of when the operative date will be. It will be the same date as the national wage decision nationally.

Retrospectivity, where I think the employers get most concerned is, is when - had the Commission, for example, on 10 March granted the first day of January as the operative date, then I believe they might have had some cause for concern in their normal terminology of retrospectivity.

But if this Commission gives an operative date different from the operative date which applies nationally - and in saying that I note that the C.A.I. is seeking to have that point tested. And whilst on that, I note that it only took us 8 days to get the application in and heard, and I note that His Honour Justice Maddern, is more busy than we are, because he's taken 13 days plus to answer their letter.

I think that it is important, Mr President, if we are going to accept, in this jurisdiction, that we do operate within the Australian system



MR LENNON:

of wage fixation, if we are going to adopt that Principle then we can't take the bits we like and the bits we don't like.

There are certain aspects of the Principles, which we lodged in our claim today, that we perhaps would have preferred weren't there, but we put them all in and 'copped the bucket' left, right and centre for doing that. But we take the good bits with the bad bits, and I think that the employers have got to be prepared to do the same.

As I said in my submission, that if all parties to this system don't commit themselves to it equally, then we may as well tear it up now and we'll go outside and we'll have the fight that people - some say that they want now and some say they want it tomorrow.

But you can't have your cake and eat it as well. You either take the system as a whole, or you don't take it at all.

And I say that in response to the argument put by Tim on behalf of the Chamber of Industries on the operative date.

With respect to the Tasmanian Government position on the state of the economy, et cetera, the only thing I'd say about the Tasmanian Government is that they too have a responsibility to ensure that this system stays in place and whilst I'm gratified to see that at the end of their submission they agree to support the change, that we all remember what happened last year when they were responsible for 40% of the price increases that went on in this State, through Government charges.

So, it is their responsibility as much as it is anybody else's to ensure that they exercise restraint,

MR LENNON:

as well as employees, in Government spending, as it is the responsibility of employers generally to exercise restraint in price increases.

And I note that the Premier tried to lay the blame at certain retailers, just after Christmas, for all the price increases that had gone on in the community and the intention of that, of course, was to direct the blame away from the Government.

And if you closely analyse expenditure in this country you'll find that 40% of price increases last year were directly responsible for increases in Government charges.

And that's where it is going on unabated, and that's where it needs to be controlled in the first instance.

So I only hope that the Commission does pick up our claim in full and does agree to make this increase operative from the same date that Federal employees have it operated from as well.

If the C.A.I. are successful in their submission well, then, perhaps Mr Abey will be back to see us, but if they are not then I don't believe that it is in any way justifiable that we should be able to pick and choose the good points and the bad point in the system. We either take it as a whole or we don't take it at all.

PRESIDENT:

Thank you, Mr Lennon.

Mr Vines.

MR VINES:

Mr President, after Mr Jarman's explanation on Japanese beer, I can understand why he's in industrial relations and not in economics.

But seeing that we're talking about Japan, sir, and how well off they are compared to us, it's extremely interesting to note Exhibit B.5 that was handed up to you when we're looking at the exports in relation to imports.

Tasmania exported some \$325 million worth of goods to Japan, yet imported a mere 52 million. It's clear that we are getting something right that the Japanese aren't getting right.

In relation to a response, sir, there's not really all that much I can respond to. The submissions that I put to you some weeks ago went into a fair amount of detail in relation to our claim and why we believe that claim is justified in relation to the Tasmanian economy and the industrial relations scene in Tasmania.

Mr Jarman has put no evidence whatsoever up to refute our submissions. The information he has put has been minimal, and has not to any degree gone to any sound basis as to why the current wage-fixing Principles are no longer suitable for Tasmania.

It is still our submission that Tasmania can operate under a centralized wage-fixing system within this State, and Mr Jarman has really given no submission whatsoever to dispute that.

The employers have also made mention of delays that the trade union movement has had in responding to the decision of the Federal Commission. The only advice that I could give to the employers is that if their representative, who went on television 5 minutes after that



MR VINES:

decision being handed down, had stopped and thought a little bit about the decision before he made the comments he did, they may not have come off as a laughing stock in relation to that.

The claim that we've put in, Mr Commissioner, ... Mr President, sorry, for a continuation of the current wage-fixing Principles, and for an increase in salaries based on C.P.I. is a genuine claim. The Commission has two claims before it in relation to a centralized wage-fixing system. We maintain our view that we will accept a centralized wage-fixing system, but it is clearly our preferred option that such a system be based on C.P.I. indexation, rather than a system which, in our view, is not going to survive even till the end of this year let alone the end of the proposed life that it has, if the Commission pleases.

PRESIDENT:

Thank you, Mr Vines.

COMMISSIONER KING:

Mr Vines, what does that submission mean in relation to your claim? I take it that your claim is for C.P.I. movements, that is the original claim and that still stands. How do you relate that to a centralized system if this Commission were to pick up, for instance, the new package?

MR VINES:

Unfortunately, sir, if we were to ... if this Commission was to pick up a centralized wage-fixing system based on the two-tiered system, it would mean then that our claim would not get up. What I'm saying is that the Commission has a choice before it of two centralized wage-fixing systems.

COMMISSIONER KING:

In other words, a retention of the old or a picking up of the new.

MR VINES:

Or the new.

COMMISSIONER KING:

Thank you.

PRESIDENT:

Thank you, Mr Vines.

CW/BC - 26.03.87

PRESIDENT - COMMISSIONER KING - VINES

MR HENDERSON: Just one very brief point, Mr President.

PRESIDENT: Yes, Mr Henderson.

MR HENDERSON: I got the impression from Mr Westwood's submission that the employers were hoping that the Commission would define the meaning of the word 'substantially part heard' in its decision on these proceedings. In my submission, the preferable way to go would be for 'substantially part heard' to be defined on those matters that have been part heard whether or not they fill the requirements, such as they may be, rather than to bring down some arbitrary definition in this decision.

PRESIDENT: In other words, identify them; those matters standing part heard before the Commission and include them or exclude them?

MR HENDERSON: That's right. If the Commission pleases.

PRESIDENT: Thank you, Mr Henderson. Ms Crotty.

MS CROTTY: Yes, sir. Just very briefly, after hearing the submissions from Mr Jarman and Mr Abey, we still are of the view that they have not discharged the onus on them to show that it's not within the capacity of the Government to pay the 9.7 claim that we have before you.

Sir, we have evidence in our substantive submission. We attempted to show that the inflation rate since 1983 had dropped; there'd been an increase in the level of employment and a decrease in the level of unemployment. And we put it to the Bench that these trends are largely because of the present system that we are currently operating under.

Sir, in our submission of a number of weeks ago, the T.P.S.A. advocate and the T.T.F. referred to the Premier's

MS CROTTY:

statement of 17 September when he presented his second reading speech on the Consolidated Fund Appropriation Bill and he referred in his speech to the positive economic trends occurring in the Tasmanian economy. I won't refer to them all, but I refer you to transcript 137 and 138 of that case. But among other things he referred to the fall in unemployment levels; the retail sales growth - up 45% compared with 41 nationally; the number of new dwellings approved has increased by more than 50% compared with just 1.5 nationally. That comment was made in September of last year, and I believe that Mr Jarman and Mr Abey, and Mr Westwood for that matter, have not put to this Bench any submission to contradict any of those factors.

Sir, I also refer to Mr Abey's submission on the Wage Case handed down by the national Bench in respect to retrospectivity.

I must admit that Mr Abey's submission here today was somewhat subdued compared to the reaction he had when the decision was first handed down. We know these old, hackneyed phrases like 'recipe for industrial disaster'; 'the worst possible decision that the National Wage Case had handed down', and I'm sure Mr Abey knows what I'm talking about.

MR LENNON:

We've had discussions with him since, Gail.

MS CROTTY:

Right. Well, sir, considering that workers will be the real losers under the two-tier system, I must admit that the employer organizations have turned on a remarkable display of petulant gloom but saw fit, I guess after they've taken time to read the current decision, to change their stance. And I couldn't help but feel somewhat disturbed when I looked at Mr Abey when he was giving his submission; he appeared somewhat

CW/BC - 26.03.87

CROTTY - LENNON



MS CROTTY:

like a contented cat that had just swallowed the sparrow. And I would actually suggest to Mr Abey, if he's concerned about retrospectivity, that he should use the money that his employers (that he represents) so clearly budget for, to invest perhaps in the short-term money market. After all, the dollar is going up and if we procrastinate in our deliberations in giving commitments to the two-tiered system that we might finally be lumbered with, then I suggest that he might very well, if he plays the short-term money market, get the \$63 million that he talked about and the 9.7, and pay us all what we certainly require and what we deserve.

Sir, in Mr Jarman's submission, I was very, very pleased and very heartened to hear that he agreed, after a series of questions coming from you, Mr President, that there must be a drop in the standard of living, and that's what my claim is all about. The 9.7 is the maintenance of the standard of living and I'm pleased to imply from that, that Mr Jarman clearly recognizes the two-tier system will give our members, particularly our members, a real reduction in wages.

And, sir, I'd like to conclude by saying that we do support our 9.7 claim. We ask you to consider it in all fairness. We ask for the operative date at the time of lodgement. And, indeed, as Mr Vines has outlined, so be it if we're running two State wage cases here. You have the choice whether to stay with the current system and the current Principles that now apply, or eventually accept the two-tiered system. But we also have a choice, and I'd like to make that perfectly clear as to whether we commit ourselves to the two-tiered system that may or may not finally come under this jurisdiction.

PRESIDENT:

Thank you, Ms Crotty.

CW/BC - 26.03.87

PRESIDENT - CROTTY

DEPUTY PRESIDENT: Ms Crotty, just a point of explanation. Is your claim 9.7 or 10%?

MS CROTTY: Sorry, sir, I have 9.7 computed up here - 10%.

PRESIDENT: Thank you, Ms Crotty.

And we will reserve our decision.

HEARING CONCLUDED