IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T Nos 1524 and 1525 of 1988

IN THE MATTER OF applications by The Tasmanian Public Service Association and the Tasmanian Trades and Labor Council to increase wage rates and allowances generally, and review the wage fixation principles

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT
COMMISSIONER WATLING

HOBART, 23 August 1988

TRANSCRIPT OF PROCEEDINGS

(RESUMPTION)

PRESIDENT: Mr Lennon, since yesterday's proceedings the Commission has received two further applications, one lodged by the Building Workers' Industrial Union and the other by the Operative Painters and Decorators' Union.

Now both these applications seek to vary the Building Trades Award rates and appropriate allowances by 3% operative from 1 September 1988, and by $10 from 1 March 1989.

We think that it's a little late in proceedings to entertain matters of this kind. I believe that I'm correct, or we're correct, in our understanding that you appear for all unions and your application (the TTLC application) covered all awards and we don't therefore propose to join these matters in these proceedings.

We have the same difficulty, although they've been called, with the two applications that were lodged by the Association of Professional Engineers. They haven't been spoken to. They will nonetheless be part of these proceedings but one does wonder why these applications are lodged in proceedings of this kind if the applicants have no intention of addressing the matters.

So, for the record we do not propose to deal with the BWIU and the Operative Painters and Decorators' Union application as part of these proceedings.

Mr Abey?

DEPUTY PRESIDENT: Yesterday, Mr Willingham, you brought to the agenda the nurses question and at that time I flagged a possible intention of raising the contents of a RANF document today, and it should be with you and other parties at the moment.

It was raised in the context by myself in that, as I understood it,

DEPUTY PRESIDENT: you indicated yesterday that whereas the RANF, and others, had exercised a right to transfer their interest to another jurisdiction, but so far as those whom you represent were concerned, whatever proceedings followed, that they would be in accordance with wage fixing principles in operation at the relevant time and that, as I understood it, unless whatever deal was proposed was ratified by an appropriate tribunal, then there would be no payments made.

Now the document that I've brought forward is headed `Royal Australian Nursing Federation Tasmanian Branch Career Structure Salary Claim Campaign' dated 12 August 1988. It's bulletin No. 13 and the original document was on yellow-coloured paper. It gives a report of progress. It's a report to its members presumably, and under the marginal note `Wednesday 3 August', this year obviously, it says:

> "Government removes previous requirement from agreement that payment of new salary rates conditional on Commission approval".

Do your instructions enable you to comment on the accuracy or otherwise of that quote?

MR WILLINGHAM: Mr Deputy President, I am seeking to have what I understood to be my previous instructions confirmed during the course of the morning, and if it pleases the Commission I will endeavour to bring you a considered response later in this morning's proceedings.

DEPUTY PRESIDENT: Yes, thank you. I would certainly like to have that matter clarified before these proceedings are finalised.

MR WILLINGHAM: We will do that for you, sir.

DEPUTY PRESIDENT: Thank you.

PRESIDENT: Would matters of that kind offend against the Audit Act, Mr Willingham?

MR WILLINGHAM: I'm not familiar enough with the provisions of the Audit Act to answer that one without notice, Mr President.

PRESIDENT: I've no doubt that any over-award payments proposed by the Government would be discussed with the Auditor-General in any case, I imagine.

MR WILLINGHAM: I'm unable to assist you with that unless you want me to take this back under notice, Mr President.

PRESIDENT: I would be assisted, yes.

MR WILLINGHAM: I'll see what I can do then.

PRESIDENT: Thank you.

PRESIDENT: Mr Abey?

MR ABEY: Thank you, Mr President and members of the Bench. Firstly may I announce a change in an appearance in that today we appear for The Printing and Allied Trades Employers' Federation of Australia in place of Mr Hargraves who has to be in Sydney, and my colleague, **MR SMITH**, will be making a submission on their behalf shortly.

On page 3 of the August national wage decision, two-thirds of the way down the page, the Full Bench had this to say:

> "In the light of our appreciation of the economic situation, we think that the wage increases allowed by this decision are the most that we can responsibly grant.
>
> There would be significant economic benefits in lower increases, but we acknowledge the force of non-economic concerns which have a contrary implication."

Over the page, a third of the way down, they say:

> "We believe that it would not be in the best interests of the Australian community for a general increase of the level we have in mind to be made as a total payment from an early date. Consequently, we have decided that the total increases should not be available in one amount, but should apply in two instalments at least 6 months apart. Without this arrangement the increases allowed would have been less."

If the Full Bench had intended to grant an across-the-board wage

MR ABEY: increase then they would have done so. Rather than granting an across-the-board increase they have specifically repudiated the concept.

The TTLC application does not represent a minor modification of the Commonwealth prescription. It flies in the face of it and it's for that reason we are opposed to the claim.

We are not enthusiastic about the level of increases granted in the Commonwealth decision, but we are prepared to live with it subject to three conditions. Firstly, the implementation must be award by award in accordance with the criteria established in the Full Bench decision.

Secondly, the commitment to the structural efficiency principle must be genuine and not just along the lines, 'Yes, we'll talk to you about it a bit later on'.

Thirdly, that the Bench makes it clear that the 3% and $10 is the maximum allowable increase. The only exceptions would be through a national wage decision or through specially convened Full Benches.

COMMISSIONER WATLING: Or Anomalies Conferences?

MR ABEY: Conceivably Anomalies Conferences.

The 3% and $10 is the maximum allowable reward for going down the structural efficiency track in a positive manner.

It is not a payment for a union glibly indicating that they're prepared to talk about something in nebulous terms.

In our submission the parties must now realise that across-the-board wage increases are a thing of the past, economically unsustainable and discredited.

MR ABEY: The TTLC seeks to draw an analogy between the first tier of the '87 principles and the 3% and $10.

The State Government describes the current system somewhat quaintly as a `one-and-a-half tier'.

In our submission both are way, way wrong.

The 1987 principles went part of the way with the two-tier approach.

The August '88 decision in our submission goes the full distance.

Unlike the '87 decision, there is no across-the-board wage increase. That has been specifically repudiated. No hedging bets, no two bob each way - rejected, out of hand. And we would urge that this Bench does the same.

The TTLC claim seems to be largely premised on the convenience of the parties.

`The second tier was too hard' they say, therefore by definition it was a failure.

In our submission the very last consideration should be the convenience of the parties.

The TCI does not exist for the purpose of making life easy for its staff, and we would like to think that trade union officials have a similar philosophy.

The objective of all of us in these enlightened times should be to achieve the maximum sustainable standard of living consistent with economic reality. And by that I mean to do what the rest of the world is not doing is a quick way to go out backwards as a nation.

There is little point in regurgitating the massive economic material which was placed before the

MR ABEY: Federal Commission upon which they made a reasoned judgment and a judgment which we support.

A 3% wage increase would cost Tasmanian employers well in excess of $100 million per annum. That's 3%, no account of $10.

If we are being asked to agree to that, then we must insist that the full intent of the Federal decision be implemented and not just the easy bits.

MR ABEY:

The TTLC has argued that the award-by-award approach cannot work because the TCI specifically will delay the process, either deliberately or through lack of resources.

They instance the penetration of the 4% second tier as a case in point.

We would like to make a number of observations.

In these very proceedings we have the Hospital Employees Federation, both branches, indicating an inability to give a commitment at this stage. They want to consult with their members, as of course is their right.

Indeed the vast majority of unions have been noticeably silent.

We are asked to accept the TTLC vague generalisation that the majority of unions will ultimately come up to the barrier. Maybe they will, or maybe they won't. All the more reason for the award-by-award approach.

It is not open for the trade union movement to continually point the bone at employers in respect of delays.

My mind goes back to the March 1987 decision when, through union procrastination, it happened to go to their masters at an ACTU congress, before they could decide whether or not they could pick up the decision, resulted in a situation whereby a wage increase operative from 10 March could not be handed down until 24 April by this Commission.

And this is a classic example of what will happen if unions are given a guaranteed operative date.

Mr Lennon has suggested that the lack of penetration (in his words) in the second tier is a case in point of the delays which would occur if we adopt

MR ABEY: the case-by-case approach.

Well the first observation we would naturally make would be that if unions had of been more prepared or were more prepared to negotiate realistically on offsets, then it would have been much quicker.

But more fundamentally, we say his statistics are very selective.

I'd like at this stage to table an exhibit ...

PRESIDENT: TCI.1.

MR ABEY: ... where we have attempted to analyse the state of play, so far as the second-tier penetration in private sector awards.

I say it is an estimate. It was done during the luncheon adjournment yesterday when we realised that ... when it came to pass that we were going to be subject to this sort of criticism. But we believe it is reasonably accurate and certainly accurate to the extent of our knowledge.

Now what we've done is identify each award and indicated whether it's completed, whether there's a claim been lodged or whether or not a claim hasn't been lodged.

Now if we go to the analysis at the back, we find that there've been 25 awards completed - a third. Two part completed, or there's no claim but, most importantly, in 26 awards no claim has been lodged. Fifteen of the claims which are unresolved have been lodged since May and only six unresolved ones were lodged prior to May.

Don't talk to us about delays when the unions cannot get their own house in order.

COMMISSIONER WATLING: Well, just look ...

MR ABEY: I think ...

COMMISSIONER WATLING: ... at some of the awards that you've said that there are no claims in, just to put the record straight.

MR ABEY: Right.

COMMISSIONER WATLING: How many people in the State are covered by the Bootmakers Award?

MR ABEY: Well, I just ... I was just going to take to this point. The substance of my submission is that Mr Lennon said only 27 awards, I think, were his - we make it 25.

COMMISSIONER WATLING: Yes.

MR ABEY: But only 27 have got 4%. And saying ... please let me ... and saying, by implication, that it's been a disaster - only a third of the people in the private sector work force have got 4%.

COMMISSIONER WATLING: Well, I take that point on board, because ...

MR ABEY: Yes. Well, if I could just perhaps finish my submission, it might become clear.

COMMISSIONER WATLING: Right.

MR ABEY: We're pointing out that an equal number `no claims' have been lodged and in a large number of those unresolved, the claims have only been lodged in the last month or two.

Now the other important point is that we have also done an estimate of the number of employees who would be covered by those outstanding awards, and we estimate it to be in the order of 9,200 out of probably private sector work force subject to this Commission of around 80,000.

So it is not open to the TTLC to come

MR ABEY: along and say, 'It's been a disaster. It's been a failure. The TCI have delayed proceedings.' The facts of life are that where claims have been lodged they have been processed and the big majority of employees in the private sector have enjoyed the benefit of a second-tier wage increase and will continue to do so.

I turn now to the form of the commitment, and it is an increasingly rare pleasure that I am able to say that we are totally on all fours with the State Government, in that ...

COMMISSIONER WATLING: We had better chalk that up for a while.

MR ABEY: ... in that ...

DEPUTY PRESIDENT: Could you go a little bit more slowly?

MR ABEY: ... in that we support 100% their submission going to the necessity to establish an agenda for the structural efficiency discussions.

MR ABEY: The TCI position is not, as Mr Lennon has suggested, that we want all the details finalised before 3% or $10 can be applied. But what we are saying is that the form of commitment should be made in such a way that there is a clear agenda of the items that will be discussed down the track. Now, these discussions are going to take some time if they are going to be done properly. But the agenda should be established and perhaps the time frame, or an indicative time frame, established.

What we are saying, it is not open for the unions to simply come along and say, `Yes, we are prepared to talk about structural efficiency; we want 3% and $10'. It has to go beyond that. We say that the agenda has to be established on both sides so that there can be no doubts later down the track with unions coming back saying, `Well, that was never on the agenda' - and indeed employers coming back and saying, `That was never on the agenda'.

And I think the case of the BWIU as instanced by Mr Willingham yesterday was a very classic ... or a clear case in point.

It is proposed by the Government that all the 3% applications be finalised by the end of October. We do not accept that proposition. It is unnecessary to impose any time limit - that will be determined on an award-by-award basis in accordance with the spirit and intent of the decision.

If I may at this stage table a further exhibit.

PRESIDENT: TCI.2.

MR ABEY: This is a decision in transcript made by a Full Bench consisting of Maddern, B., Hancock, Deputy President, and Commissioner Bain on 18 August in the Dry Cleaning Industry Interim Award 1980.

MR ABEY: If I may take the Commission through this decision. It says:

> "We have been asked to approve an agreement of parties and vary the Dry Cleaning Industry Interim Award to give effect to the National Wage decision of March 1987. The agreement includes second-tier increases, the reduction of standard hours and superannuation improvements.
>
> Also included in the agreement of the parties are provisions in relation to TCR test case decisions of this Commission.
>
> We are satisfied that the agreement of the parties meets the requirements of the wage fixation principles.
>
> Further, although we are not required to determine in this case the proposals of the union in relation to the operation of the National Wage Case decision of August 1988, we are satisfied that the applicant union has properly given consideration to the terms of that decision in that it has recognised the advisability emphasised in the National Wage Case of August 1988, of allowing some time to elapse between the second-tier increases and increases available under that decision."

So here is the first example of where an award has been faced with the situation of having a second-tier wage increase, superannuation and reduced hours in a reasonably close proximity in terms of time. The union in that case has, in accordance with a Commonwealth decision, had recognition for that significant cost

MR ABEY: impact all of a sudden and has apparently agreed to defer for an unspecified period, the application of any 3% national wage increase.

Now that is what the decision is all about. And I know the unions will come back and say, `Well, because that hasn't happened for the last year, the employers have been advantaged in that they haven't had a second tier or superannuation hasn't been imposed and therefore it shouldn't be any skin off the nose to have it all imposed all at once'.

Well, out there in the work place it doesn't work like that. Just because something hasn't happened in the past, it doesn't mean that employers are in a position to suddenly absorb cost increases of the order of 10% or more, which conceivably could happen. In, say, in the Mechanical Engineers Award which is currently before this Commission, where to date there will be a 4% second tier and 3% superannuation, both by consent, applying from I think about 1 September, and I would flag that possibly that is one award where we might be seeking some deferment of a 3% application.

Each case has to be considered on its merits. And just because some employers haven't faced the same level of cost increases in the past that others may have, doesn't put them in the position to suddenly absorb massive increases of the order of 10%. The market place just does not work like that.

PRESIDENT: Mr Abey, hasn't that Full Bench in effect done an about-face on this dry cleaning matter? Because as I read the August decision - and I am reading from page 7, the second last paragraph. They say:

> "Moreover, in general terms, we believe that it may be advisable to allow some time

PRESIDENT: to elapse between second-tier increases and increases available under this decision. Indeed, in cases where the second-tier increases have not yet occurred, it may be that the parties will agree or the Commission will decide in particular circumstances to postpone second-tier increases until after this decision has been implemented."

Well now, the decision was given on 12 August, I believe, and this judgment that you have handed up was given on the 18th - 6 days later - and instead of deferring the 4%, they have granted that and deferred the 3%.

MR ABEY: Exactly ...

PRESIDENT: But it doesn't ...

MR ABEY: ... which of course is open to them under the decision.

PRESIDENT: I don't read it that way.

MR ABEY: Well, if you go to page 7, at the bottom it says:

"In arbitrating [and that is arbitrating on the operative date of the 3%], the Commission will take into account the date of operation of increases under the second tier, improvements in superannuation and reduction in hours".

Now, under this flexible decision, the Commission can say , `Well, there has been an agreement reached in the Dry Cleaning Award in relation to reduced hours, superannuation and second tier'. And bear in mind that agreement wasn't reached in one day. It was reached over a period of time going back and was only brought to the Commission in recent days.

MR ABEY: The Commission, rightly in my view, accepted the consent of the parties and the willingness of the parties to have their agreement ratified and says, `Yes, we will ratify that, but in accordance with the criteria set out in page 7, we are also pleased to note that the union has indicated that there should be a decent gap between the application of these increases and the 3%'.

You can do it `either/or'. Neither option is excluded and it would depend on the circumstances and the attitude of the parties which option was adopted.

PRESIDENT: Well, they specifically refer to the possibility of second-tier increases being deferred, but I ...

MR ABEY: That's correct. That's correct and I think that would be more likely to occur where, say, a claim has just been lodged in relation to second tier but there's been no progress in negotiations.

And it might be, the arrangement entered into by the parties or indeed determined by the Commission would be that, `Okay, in that circumstance you haven't got far down the track on second tier. We'll give you the 3%% from an early operative date, but put the second tier on the backburner for a couple of months or 3 or 4 months, or 6 months'. All these options are open under this sort of flexible decision.

PRESIDENT: Thank you.

COMMISSIONER WATLING: Well, if that ... just follow that through. If they then sort of go to 3% first ...

MR ABEY: Mm.

COMMISSIONER WATLING: ... and one got involved in a genuine structural efficiency, what would be left for them to trade off for the 4%?

MR ABEY: Oh, quite a deal. I don't see that the two are ... well, if you take that conclusion there won't be any structural efficiency in awards that have had a 4% second tier. And that doesn't follow.

COMMISSIONER WATLING: No, I'm saying ... well, isn't there less likelihood to get trade-offs if there's been a genuine effort on the part of all concerned to involve themselves in structural efficiency? That presupposes that you've been through the system, you've turned everything upside down and you've come up with a `you beaut' award and it's effective and efficient in industry. How do they then get their 4%, because the 4% is based on trade-offs?

MR ABEY: That's correct.

COMMISSIONER WATLING: Well, if you've been through the major exercise there shouldn't be any trade-offs left.

MR ABEY: Well, I don't know that necessarily follows. I think ...

COMMISSIONER WATLING: Well, in theory that's ...

MR ABEY: ... without being exclusive, there is a much stronger emphasis on award restructuring under the new principle than under the old principle which, whilst awards were not excluded, the offsets were more often than not in the non-award area, whereas this envisages a fundamental structural change to awards.

And whilst there is some overlap, certainly the two don't stand in each other's place.

COMMISSIONER WATLING: But surely you must recognise it would be a lot harder to get offsets up after you've been through a structural efficiency exercise, if the job's been done properly.

MR ABEY: Well, it possibly is.

COMMISSIONER WATLING: So does that group of people then lose out on the 4%?

MR ABEY: Not necessarily. It's ... you know, for a start we don't accept that there is any automatic right to 4%.

COMMISSIONER WATLING: Oh no, I don't make that point. But in terms of equity, they may never catch that up.

MR ABEY: Well, they may or may not, that will depend on the circumstances of each case. But if we're talking about equity and across-the-board wage increases, as I say, they are a thing of the past.

Now I envisage that structural efficiency exercises are going to take much longer than ... the exercises as such are going to take much longer than second-tier agreements.

And that's why we're certainly not insisting that the details of the structural efficiency exercise - we're not insisting that that be negotiated and finalised before this payment of 3%, because we would envisage that those exercises, if done properly, are going to take 3 to 6 to 12 months and maybe 2 years. That's the sort of time frame that we envisage the structural efficiency exercises are taking.

That doesn't mean 3% and $10 is going to be delayed, as I hear the clowns in the back starting to laugh.

That's not what we're saying.

COMMISSIONER WATLING: You mean your brother advocates.

MR ABEY: Well, whoever was ... well, I'll withdraw that comment, it was probably unnecessary, but people just don't want to understand. That's the problem.

We are not seeking to delay 3% and $10, and we're not insisting that

MR ABEY: structural efficiency exercises are completed before that is paid. Now if I can make it any clearer, please help me.

COMMISSIONER WATLING: Yes. Well, my question was really in relation to, after going through the exercise of structural efficiency, there shouldn't be anything left.

And you're saying to us that we shouldn't be involved in the equity game. Where is the equity in it for those people that have worked and those unions and employees that have worked with industry, and your members, over the years to have an efficient operation, no industrial activity, and worked along with management to make an efficient industry, where is the equity in it for them?

All they get for their troubles is that they lose the 4%. Is that your argument?

MR ABEY: Well, you're saying that the two-tier system is unfair.

COMMISSIONER WATLING: Well, I always say it's not fair for those people that have operated in an efficient area. I make no bones of that.

Because there's no incentive, surely, for people to act in a proper and just manner. If you're saying that they can get their ... they may not get their 4%, because they've been super-efficient.

They've got to bear the cost of this.

MR ABEY: Well, I'll be quite candid, I have difficulty in faulting your argument, but the circumstances are that not everybody is equal. Australians are more equal than most people in the world. But you justify it to me why a truck driver in the oil industry is on a 35-hour week and probably earns $100 a week more than his brother driving for Brambles, then we'll start talking about equity.

MR ABEY: The reason that that truck driver in the oil industry is in that situation is because he's got industrial muscle.

MR ABEY: No other reason.

So equity is out the door ...

COMMISSIONER WATLING: And he continues to get more because you're prepared to say, `We will give him extra money if he eliminates some of those bad practices that they've forced in over a period of time through industrial muscle'. But the one's that have been doing the right thing get nothing.

MR ABEY: Well they don't get nothing.

COMMISSIONER WATLING: They get about three-fifths.

MR ABEY: Well, no, they don't. They get the 4% as is witnessed in the retail trades decision. It takes a little longer - I would accept that.

And as I say, quite candidly, if you're looking at pure equity, the two-tiered system is unfair. And I don't walk away from that.

But from a macro-economic point of view, it was the only thing that Australia could do. And I'll become more enthusiastic about equity when the trade union movement gets its act together.

And we don't see the building industry and the transport industry and the oil industry and the aviation industry being the first ones up every time there is a change in the system.

COMMISSIONER WATLING: Maybe it's some of your colleagues that have been the first to give way in the building industry, knowing it extremely well.

MR ABEY: Well I guess it comes back to a pain threshold as well, Mr Commissioner, that the facts of life are in a market economy, some employers are more vulnerable industrially than others and unions know that and exploit it to the fullest.

MR ABEY: Now when they change their tactics, then I guess employers will.

DEPUTY PRESIDENT: Mr Abey, just before we leave that, you'd be aware of course that this Commission is bound by the Industrial Relations Act in accordance with section 21(a). In the exercise of its jurisdiction, it says:

> "The Commission shall act according to equity, good conscience [and so forth]".

So we can't ignore that obligation of the Act and the dilemma, obviously, is how we reconcile your argument as to what the new principles should be and the requirement of the Act in the quote that I've just adverted to.

MR ABEY: Well I appreciate it is a dilemma, Mr Deputy President. I guess it was the same dilemma that faced the Bench when the two-tier system was introduced and it will always be a dilemma faced by industrial tribunals because out there at the coalface all people are not equal. And that's a fact of life.

However, I suppose it would be open to this Commission, if it was concerned with this notion of equity, to grant an across-the-board wage increase albeit at a lower level than, say, did the Federal Commission, because that's what they said in their decision in the quotations I've referred to, that had they gone across-the-board, it would have been a lesser amount.

Now that's an option open to this Commission. It's not ...

DEPUTY PRESIDENT: Do you think ...

MR ABEY: ... an option that I recommend.

DEPUTY PRESIDENT: ... those strong industries or those

DEPUTY PRESIDENT: with a low pain threshold - however they might be described - would be able to live with a lower increase than as applied nationally in Tasmania?

MR ABEY: No, I don't. And it's not ...

DEPUTY PRESIDENT: Well ...

MR ABEY: ... as I say, it is not a course that I'm advocating. I'm advocating the same decision as the Federal decision for a number of reasons, and that's one of them.

I just don't think it's realistically open or a realistic option to have two different levels of wage increases.

DEPUTY PRESIDENT: Mm.

MR ABEY: Just as I don't think it's realistically open to have this Commission making a decision which is fundamentally at odds with the Federal decision in terms of granting an across-the-board increase.

DEPUTY PRESIDENT: Whilst you are disturbed, perhaps I could go back to another question which I was storing up for an appropriate pause.

You have told us that you believe that there ought to be an award-by-award approach in applying the new Federal decision and you said, I believe, that at least an agenda should be drawn up in relation to the parties to each and every one of the awards and that they should set out at least the matters which are to be discussed, which are on the table together with, possibly, a timetable.

And then you also drew our attention to the fact that no claims have been lodged - and I think in 25 instances - under the private sector awards.

I'm a little bit confused as to how

DEPUTY PRESIDENT: you foresee the existing system and the proposed system actually working in relation to this.

On the one hand I would have thought that it would a heaven-sent opportunity for employers to grasp the nettle and to pursue the benefits which are available to employers under the ... both the present principles in relation to second-tier increases in particular, and accordingly with this new structural efficiency approach.

An employer who wanted to make his business more cost productive, more efficient, surely would be in the ideal situation to draw up an agenda of matters that it wanted to at least discuss with employee organisations.

You know, it really goes back to the employer prerogative as to how he wants to run his business. And yet, on the other hand, you're really saying to us - as I understand it - that it's up to the unions to become active and to draw up agendas as to what should be on the table and to make claims.

Is that what you're really saying?

MR ABEY: I'm saying it's up to both sides to set the agenda. We'll set it if you like, but there won't be many ...

DEPUTY PRESIDENT: When?

MR ABEY: Well, if we set the agenda and we stick to the agenda we'll have it established in respect of every award within a week, if that's the only items that are going to be discussed under that item.

But that's, again, unrealistic because it's a two-way stream and, obviously, if we set the agenda the first item won't be getting much of a run. The others might get a bit, but certainly the first one won't.

DEPUTY PRESIDENT: Well, obviously any party can put matters on an industrial agenda, but isn't it more difficult for employees in their organisations to suggest areas of structural efficiency than the employer?

MR ABEY: I believe that's a myth. I really do, with respect, Mr Deputy President. I think it's a myth. It's no more difficult, indeed we're always told that it's the employees who know how to make things more efficient than the boss does, so if that's the case why don't they come up with the ideas?

We're always told that we should consult with them. I don't think it's any more difficult at all.

DEPUTY PRESIDENT: Mm. I hear you.

MR ABEY: There may be, certainly, a less willingness on the employee part but we're undergoing a fundamental change in industrial relations in Australia and it's taking a bit of an education process. It doesn't mean we should say it's all too hard and go back to the easy way out.

DEPUTY PRESIDENT: Thank you.

PRESIDENT: Mr Abey, it's my turn.

MR ABEY: Just remind me, I haven't finished my submission.

PRESIDENT: Well, we may get what we want from you.

There are two references. I think you've already drawn our attention to them, but I'm interested in your submission that there should not be an across-the-board increase and, as I understood it, you were saying the Full Bench made that clear.

Now, the first reference that you pointed us to was on page 4 and I'll read it in context. It says, about a third of the way down:

> "We believe that it would not be in the best interests of the Australian community for a general increase of the level we have in mind to be made as a total payment for an early date".

I accept that. Then they go on:

> "Consequently, we have decided that the total increase should not be available in one amount, but should apply in two instalments at least 6 months apart. Without this arrangement the increases allowed would be less."

Is it not possible that they were saying, `We would not allow the 3% plus $10 to be paid in one instalment, but we have no objection to the 3% being paid across-the-board'?

MR ABEY: No, they're saying both, in our submission. They're saying, firstly, it would be entirely inappropriate to have the 3% and $10 paid in one amount and that should be split, but they then go on to use the words,

MR ABEY: `not earlier than' and `at least 6 months apart'.

Now, inherent in that is something against the nature of an across-the-board increase in every award.

Now, we have no difficulty with the notion that some awards will have 3% and $10 applied from 1 September and 1 March respectively, no difficulty at all.

What we're saying in a macro sense, that it shouldn't apply to all awards.

PRESIDENT: You don't see the 3% and $10 as an interim increase in those circumstances?

MR ABEY: Absolutely not. There's nothing interim about it. It is the maximum available under this decision, except by reference to a specially convened Full Bench and I think that you should make that clear too.

PRESIDENT: You'd recall the response that Mr Lennon gave when I asked him a fairly similar-type question, that the restructuring may very well result in further claims for more money, as a consequence.

MR ABEY: Well, I've no doubt that it will result in claims in that respect when you talk about career paths and that sort of thing. I would also make the submission that if there are any costs associated with a structural efficiency exercise, any additional costs, then under this decision it would not be capable of implementation before July next year because the decision repeatedly makes reference to the maximum available increases under the decision.

Does that answer your question, Mr President?

PRESIDENT: Well, yes, that's part of it.

MR ABEY: The exception being a specially convened Full Bench, a special case.

PRESIDENT: Yes, understood.

The other reference that I would appreciate your comments upon appears at page 7, about the middle of the page and it's `Method of Implementation'. The last two sentences of that large paragraph, it says:

> "Some parties have suggested that awards should only be varied for those who can reach agreement with increases for those who have not negotiated agreements being deferred to some later date.
>
> The Commission will not limit its powers as suggested but will arbitrate in accordance with the Act as required."

Do you think the Commission is saying there that if it is suggested that because there can be no agreement there should be no money then we will arbitrate?

MR ABEY: Well, the Commission, quite clearly and specifically, has not ruled out the arbitration option and if there is no agreement between the employers and the unions, the Commission can .... 3%. It's beyond question.

PRESIDENT: Yes, thank you.

PRESIDENT: Now you said we had to remind you you hadn't finished your submissions.

MR ABEY: Thank you, Mr President, I am indebted.

Mr Commissioner, we, as flagged by Mr Lennon, would propose two amendments to the principles as determined by the Full Bench.

The first one goes to the Anomalies and Inequities Conference which effectively has been put on ice under the Federal decision with the alternative, as I see it, being especially convened Full Benches to handle special cases.

In our submission it is probably desirable to continue with the Anomalies Conference to deal with those mostly genuine cases that have to be rectified, or should be rectified, or at least their case should be heard.

I don't put any particular criteria on those, but they do arise from time to time, as we all know, and we believe that there should be an avenue open to have those matters heard without resorting to the concept of a special case because, if we do that, I think we are going to debase the quality of these special cases and everything will become a special case, and it will become a nonsense situation.

Now in our submission the special cases should be very limited and small in number, but we believe there should be an avenue available to allow these genuine cases, whether they are a substantially changed classification or the fact that a supervisor is getting less than those he is supervising - those situations.

There should be an avenue to process those claims in accordance with equity and good conscience.

MR ABEY: So we would support a continuation of the anomalies procedure.

I would add that the special procedure under the previous principles dealing with second-tier matters which pierced the 4% barrier would no longer be relevant and so that procedure would go by the way.

The other change relates to conditions of employment, and we don't believe it's necessary to tie up every claim for a change in conditions of employment to a specially constituted Full Bench.

Again, this would debase the quality of the special cases, and we believe the principle is sufficient and appropriate as it reads, leaving off that last line and a half.

PRESIDENT: On the understanding that the matter could go to a single Commissioner or a Full Bench?

MR ABEY: Exactly, Mr President. If the Commission pleases.

PRESIDENT: Thank you, Mr Abey.

COMMISSIONER WATLING: Mr Abey, did you have a view on the proposal about superannuation in the guidelines?

MR ABEY: Which guidelines, sir?

COMMISSIONER WATLING: Well, Mr Lennon's document in ...

MR ABEY: I thought it was inherent in our application, and perhaps I'm remiss, that we are totally opposed to any notion that the Commission can award retrospectivity in any of the circumstances as outlined in Mr Lennon's draft principles and, again, it's becoming a habit - we are at one with the State Government in that respect.

We believe it is fundamentally important that retrospectivity not be

MR ABEY: available, and I instance again what happens when unions are given a guaranteed operative date. They procrastinate, like they did in March '87, and muck around from 6 to 10 weeks, because they are under no pressure to perform. It's as simple as that.

Retrospectivity, in our submission, is now a dirty word. It has almost been obliterated from the industrial dictionary, and we'd like to see it dead and buried.

PRESIDENT: Any retrospectivity for nurses, Mr Abey?

MR ABEY: No, not under any proposals that we have been part of. I understand some other parties may have another date in mind.

COMMISSIONER WATLING: You have just fallen out again.

DEPUTY PRESIDENT: Mr Abey, before you relax in your seat, you say that retrospectivity is almost a thing of the past, and yet there is a provision in a still fairly fresh piece of legislation which was thoroughly scrutinised by your organisation and other appropriate organisations before it. It was passed by legislature, and I refer to section 37(5), which was mentioned yesterday, and just to save you turning to it, it says:

> "The Commission may in an award give retrospective effect to the whole or any part of the award:
>
> (a) if, and to the extent that the parties to the award so agree, or
>
> (b) if in the opinion of the Commission there are special circumstances that make it fair and right to do so".

MR ABEY: Yes.

DEPUTY PRESIDENT: Now in the discussions yesterday I raised with Mr Willingham as to whether or not this Commission could, even as constituted, at a hearing such as this, adopt a principle which runs directly contrary to the provisions of the law of the land.

MR ABEY: Well, I don't believe it is inconsistent. There is nothing, in our submission, to stop the Commission setting the guidelines that it will follow, or the principles that it will follow, in a set of defined circumstances.

Now, obviously in the past you have done that under the previous principles. But I think that is not inconsistent with the Act. It is not saying by adopting these principles that there cannot be retrospectivity in any circumstance or under any situation.

DEPUTY PRESIDENT: I misunderstood you, I thought that was precisely what you were saying.

MR ABEY: No, no, that's not true. There is nothing, I don't believe, which ...

DEPUTY PRESIDENT: No, but you are proposing in the principles that there be no way that any decision can ever have retrospective operation.

MR ABEY: No, I am not ... with respect, Mr Deputy President, we are not. We are saying that where the Full Bench indicates that there will be no retrospectivity - and that is basically superannuation and the 3% - then our view is the same. But without going right into it, I don't think that there is anything inherent in the principles which preclude retrospectivity of an allowance adjustment, for example.

COMMISSIONER WATLING: And supplementary payments?

MR ABEY: Conceivably. We would certainly have a view on each one. But there is nothing inherent in the principles which say that you cannot award retrospectivity in certain circumstances.

All it's saying is that in those defined areas, namely superannuation and the 3% wage increase, there shall

MR ABEY: not be retrospectivity. And I think this is even more important now than it was previously.

I can understand and, on a different day, even have some sympathy for the trade unions' position under the old Principles whereby with the 4%, if there was not agreement, the Commission was very restricted in its arbitral capacity. It was restricted to two and two.

But in this situation the Commission is not constrained at all so far as its ability as an arbitrator. It is not constrained, it is not fettered. And indeed, one of the criteria which the Commission shall take into account when arbitrating on operative dates is indeed the behaviour of the employer.

Mr Willingham apparently had some difficulty in understanding that. But I am sufficiently candid to say that sometimes employers may seek to frustrate and delay things, just as unions play their own tactics from time to time.

And I think there will be circumstances arise where unions will come along to this Commission and say, `That employer or that employer organisation is deliberately frustrating this exercise. It is unfair and we want you to arbitrate on the spot'. And depending on the circumstances, I think the Commission would act accordingly.

Now, that is a relevant consideration. But the Commission is not fettered. It can act quickly. It is not constrained by any time delays. It can bring on a hearing at an hour's notice, technically. I am not advocating it, by the way, but you can do it. So we say this prohibition on retrospectivity, in these two important areas in particular, must be maintained.

PRESIDENT: Nevertheless, do you maintain, as part of your submission, that until there is some positive outcome from negotiations on an award-by-award basis, there is no money to be paid, Mr Abey?

MR ABEY: No. It depends what we talk about ...

PRESIDENT: I am just trying to understand how this system should operate. Frankly, I don't understand it.

MR ABEY: Well, if I can perhaps reduce it to an example. We would say we would see a situation whereby the 3% could apply where the following had occurred: (a) the unions give a `no extra claims' commitment. That is clear.

PRESIDENT: Yes.

MR ABEY: I think we all understand that. Secondly, the parties come along to the Commission and say, `We formally commit ourselves to go down the structural efficiency track in a positive manner, and we have identified jointly the following items to be on the agenda to form part of the discussion. They include career paths, training, multi-skilling, broadbanding, the spread of ordinary hours'. I won't say penalty rates because that has got Mr Jarman into a spot of difficulty but ...

MR JARMAN: Thanks to Mr Lennon.

MR LENNON: I didn't ask the question, no.

MR JARMAN: Didn't you .... obviously got a ....

DEPUTY PRESIDENT: I asked the question.

MR ABEY: But I do hasten to add that nothing is excluded (and I agree with Mr Jarman's rejoinder to that question)

MR ABEY: and list the items for discussion. And then maybe there would be an indication to the parties that we would expect in 3 months' time to have progressed some distance.

There may be a report back to the Commission, maybe not. But not simply open ended, that 'Yes, we will talk to you about it'. That is not good enough, in our submission. Now, that can occur. We see no impediment to applying the 3%, maybe even applying the $10.

But I think probably the preferred approach would be to not apply the $10 in most situations until a little bit further down the track.

PRESIDENT: You are not saying apply the 3% from the date that the commitment is given and the agenda is identified, but perhaps following some positive activity?

MR ABEY: No, there doesn't have to be any positive activity. The agenda ... we say the only positive activity that is required is to identify the agenda; not to progress it any further than that.

PRESIDENT: Well then let's assume for the purposes of discussion that consequent on our decision, the unions came along collectively and gave a commitment in relation to every award and said, 'Yes, very well, we will also agree to enter discussions in accordance with the agenda that you have put forward by way of example'.

Would there, in those circumstances, be any reason why the 3% couldn't be given to all of those unions who were prepared to give that commitment?

MR ABEY: Yes, there would, because the emphasis in a decision of this nature is on diversity and not commonality. There is no one standard which you can apply across-the-board and the agenda, if this decision is to be a success, will be different from every award.

Now, that's why it's not possible, in our submission, to come along and just give a collective commitment to talk about it. Each union needs to go and look at their awards, as do the employers, and come up with agenda for those awards.

PRESIDENT: Yes, well, I understand that. Thank you, Mr Abey.

Yes. Your name?

MR SMITH: Mr Smith.

With the grace of the Commission, I would like to announce yet another change in my appearance. I now appear, in addition to the one already announced, on behalf of the TFG Industrial Association in lieu of Mr Rice.

Perhaps whilst I'm wearing that hat, Mr President, members of the Commission, the TFG Industrial Association urges the Commission to adopt the decision handed down by the Australian Conciliation and Arbitration Commission and in that respect supports the submissions of the Tasmanian Confederation of Industries.

I also would like to make a submission on behalf of the Printing and Allied Trades Employers' Federation of Australia. In respect of that, I would like to read some relevant passages from 12 August decision by the national wage Full Bench from Print H.4000.

On page 2, under the heading of

MR SMITH: `Industrial Action' the Full Bench had this to say:

> "On 13 July 1988, the Commission determined that by deliberately flouting the recommendation of the Deputy President of the Commission, and clearly breaching its commitment to the current Wage Fixation Principles, the Printing and Kindred Industries Union, the PKIU, had raised serious doubts as to its understanding and acceptance of its responsibilities as a registered organisation and the bona fides of any commitment it might make.
>
> The Commission determined that all PKIU applications to give effect to this decision would be dealt with by this National Wage Bench after the handing down of the decision in this case."

Based on that statement, the PKIU is not yet a party to the decision of 12 August and its applications will be dealt with separately before the National Wage Bench at a later date.

A meeting between major employer respondents and the PKIU was held on 18 August 1988 to address the matter of the PKIU's involvement in the implementation of the National Wage Case decision and the following statement was made to the PKIU by the employers:

> "Employer organisations in the printing industry desire that the PKIU operate under the centralised wage fixing system in full compliance with the terms of 12 August National Wage Case decision.
>
> Subject to the PKIU giving the required no extra claims

MR SMITH:

commitment and formally agreeing to cooperate in a review under the structural efficiency principle, and that commitment being in a form acceptable to employers and the Commission, the employers would support an application to give effect to the national wage decision at an early date."

The Printing and Allied Trades Employers' Federation of Australia has prepared a preliminary agenda of matters that may give effect to the structural efficiency principle. The list is not exhaustive and other employer organisations have in place review mechanisms that will give rise to similar agenda items for eventual discussion under the structural efficiency principle.

We anticipate that the PKIU will also prepare agenda items which, together with the employer agenda, would form the basis for the review envisaged by the principles.

We would see the following program for ongoing discussions in relation to structural efficiency being established:

1) a conference under the chairmanship of a member of the Commission for the purpose of setting parameters and agenda for future discussions between the parties;

2) report back conferences at agreed intervals to the designated member of the Commission; and

3) the formation of working parties to process those agenda items.

The Printing and Allied Trades Federation supports the submission by the State Minister for Industrial Relations in the matter of agenda items and directs the Commission's attention to page 7 of the national

MR SMITH: wage decision, under the heading `Method of Implementation'. The opening paragraph of that decision reads:

> "We have decided that the increases we are prepared to allow should be available to all employees where the relevant union indicates a commitment to work through the system".

We would seek to have the following undertaking incorporated in any award variation to reflect the spirit of the National Wage Case decision and this commitment would be in addition to a commitment in respect of no extra claims.

The proposed commitment reads:

> "It is a term of this award arising from the decision of the Australian Conciliation and Arbitration Commission in the National Wage Case of 12 August 1988, the terms of which are set out in Print H.4000, that the unions undertake to cooperate positively in a fundamental review of the award with a view to implementing measures to improve the efficiency of industry and provide workers with access to more varied, fulfilling and better paid jobs.
>
> The measures to be considered should include, but not be limited to ... "

And the commitment then lists the seven dot points on page 11 of Print H.4000 under the heading `Structural Efficiency'.

We believe that this provides a form of words to give effect to the commitment required in respect of the structural efficiency principle.

MR SMITH:

The Federal secretary of the PKIU on 15 August requested the President of the AC and AC to list the unions' applications to give effect to the National Wage Case decision.

Whilst the President has not relisted those applications, a hearing on matters giving rise to the PKIU's exclusion from the National Wage Case decision is listed before Mrs Deputy President Marsh in Sydney at 2.30 today.

MR SMITH: Pending the outcome of those proceedings and the readmittance of the PKIU into the current decision of the National Wage Case, the Printing and Allied Trades Employers' Federation would undertake to advise the Commission of the outcome of other tribunals and request that in arriving at any decision in relation to the printing industry and the PKIU, you take into account the proceedings in the Federal arena and the subsequent implications of those decisions as they relate to this State.

If the Commission pleases.

PRESIDENT: Are you suggesting, Mr Smith, that this Commission should somehow exclude the PKIU from any decision that we might take and, if so, why?

MR SMITH: That is the proposal, Mr President, on the basis that the industrial action that was taken by the PKIU during the National Wage Case proceedings was taken on a national basis and therefore affected Tasmanian employers and, as a result, they have been specifically excluded from the benefits of that decision, and that matter will obviously be decided in the Federal jurisdiction.

Secondly, the State award does ...

PRESIDENT: Well, before you move on. Was any attempt made by your organisation to have this Commission intervene in that industrial action?

MR SMITH: No, Mr President.

PRESIDENT: I see.

MR SMITH: The State award in relation to the printing industry in this State does prescribe the wage rates by reference to the relevant Federal awards and, accordingly, we would say that is consistent with the Federal decision that the PKIU be excluded until such

MR SMITH: time as a resolution is reached in relation to their deletion from the national decision.

PRESIDENT: But only from the Printing Award, not from the Government Printing Staff Award, for example?

MR SMITH: That's true, Mr President.

DEPUTY PRESIDENT: If we were to follow that through and be consistent, Mr Smith, would you suggest that we ought to also exclude from any decision we make other employee organisations who have engaged in industrial activity in recent times?

MR SMITH: No, I wouldn't, Mr Deputy President, in respect that the industrial activity by other employee organisations to my mind has not been as deliberate in its attack against a decision or order of the Federal Commission, and therefore hasn't had the same impact in relation to the National Wage Case proceedings.

DEPUTY PRESIDENT: I see.

MR SMITH: If the Commission pleases.

COMMISSIONER WATLING: Mr Smith, you said that the State award contained (and I just can't recall offhand) a provision that you should follow the Federal award prescription. If this Commission was of the mind to vary the award by 3% and $10.00, what would it vary?

MR SMITH: It would only vary section 2 in relation to clerks, Mr Commissioner.

COMMISSIONER WATLING: So even if the decision of this Commission was favourable in terms of the application made by the TTLC, we wouldn't be varying that section of the award anyway, because it refers you somewhere else.

MR SMITH: That is correct, and does make the submission I have made, to some extent, redundant.

COMMISSIONER WATLING: That's right. Right, thank you.

PRESIDENT: Well, are there any more redundant submissions? Mr Lennon?

MR LENNON: Mr President, I wonder if we could have your indulgence for a short adjournment of, say, half an hour, and then we will be in a position to present our reply. So perhaps until 12.00 o'clock? Would that be satisfactory?

PRESIDENT: Yes.

MR LENNON: Thank you.

...

PRESIDENT: Yes, Mr Lennon.

MR LENNON: Thank you, Mr President. In replying to the arguments advanced by the Government representatives and Mr Abey and other employer representatives, let me say from the outset that nothing that we've heard from any of the employer representatives in these proceedings leads us to believe that they have in any way demonstrated that our claim should not be acceded to, and that is that the 3% should be granted from 1 September and the $10.00 from 1 March next year, provided the unions are prepared to give a commitment in two parts.

First of all, to make no extra claims outside those that are allowable under the principles we've proposed and, secondly, to give a commitment to review the structure of awards.

I can give some indication to the Commission now as to the sort of commitment that we would be prepared to give. It would be in the following terms.

1. The union undertakes until 1 July 1989 not to pursue any extra claims, award or over award, except where

MR LENNON: consistent with the National Wage Case principles.

2. The union agrees that it will cooperate in a review to be monitored by the Commission of the award to give effect to the structural efficiency principle.

In this regard, it is noted that it is not intended that this principle will be applied in a negative, cost-cutting manner, or to formalise illusory short-term benefits.

Its purpose is to facilitate the type of fundamental review essential to ensure that existing award structures are relevant to modern competitive requirements of industry, and are in the best interests of both management and workers.

3. The above commitments are given in the context of the clear need for the Federal Government to take appropriate measures to bring down the rate of inflation.

Now I think, Mr President, the commitment in those terms clearly meets the objectives that we've been able to delineate from the employers in these proceedings.

I think they are to be shameful, frankly, from the employers' side that they have been unable to give this Commission any idea of what they hope to achieve from the structural efficiency principle into the future.

Neither from the Government nor from Mr Abey were we given any detailed explanation of what the employers' views were with respect to structural efficiency. They preferred rather to flick past the ball straight back to the unions, and so that we were the ones who should now adopt the managerial prerogative in determining how businesses should be run into the future.

MR LENNON: We are prepared to assist, if that's what the employers want. We are prepared to sit down with the employers and develop strategies for structural efficiency into the future which will be monitored by this Commission.

But in doing that we say that we are entitled to do that within the framework of a workable wages system. And a workable wages system for Tasmania is, we believe, to adopt our submission which is 3% from 1 September and the $10 from 1 March next year.

Mr Willingham referred in his submission to the requirements and obligations of all parties in the centralised wage fixation system. Well the most important requirement is the one I've already alluded to and that is to have a system which is workable, which is capable of being implemented.

You can't expect employees, low wage employees at that, to be consistently told to tighten the belt when employers will not do the same, nor will they cooperate.

And as I indicated in our primary submission, since 1985 there has been a significant reduction in real wages for employees in Tasmania. Some have tightened their belts more than others.

The Retail Industry Award, which affects 20,000 people in this State, only recently got the 4% increase. That award contains some of the lowest rates applying in this State. And yet, by all accounts, it is one of the most efficient industries in this State.

To take the point of the Deputy President, yourself and Commissioner Watling, where is the equity that has applied in the system in the last few

MR LENNON: years?

We are attempting to return equity into the system and at the same time we indicate our preparedness to cooperate in a fundamental structural review of awards.

Indeed, at the National Wage Case proceedings of the Australian Conciliation and Arbitration Commission, a number of exhibits were tendered by the union movement to detail how, in some particular areas, we would see that review being undertaken.

The Metal Industry Award, a very lengthy ... sorry, in regards to the Metal Industry Award, a very lengthy exhibit was presented by the ACTU and I would suggest to the Commission that it refer itself to that exhibit in getting some idea of what's proposed for that particular area.

So too in the Building Industry Award an exhibit was presented by the ACTU as in Telecom to demonstrate to the Federal Commission our particular thoughts that are relevant to those sectors for structural efficiency and a review of awards.

Certainly it wouldn't take too much imagination, Mr President, I don't believe, for the employers to be able to formulate with us a methodology by which all of the awards of this Commission could appropriately address the structural efficiency principle.

We're not prepared, however, to do that and have the 3% hanging over our heads. We are entitled to the increase. It is a cost of living increase and we want it now.

If we're given it, we will give the commitment and we will cooperate and we will be an active participant in the structural review exercise.

MR LENNON: So the requirements and obligations of the centralised wage fixation system do not demand - do not demand - that State tribunals simply pick up the decisions of the ACAC. They do not demand that.

What they demand for consistency and uniformity of treatment is that the outcomes - the final outcomes - are the same.

But the method of implementation - the date of implementation - may well vary. And the classic example of that is, of course, the 4% two-tiered system where the implementations of that system did vary from one State to another, from one award to another.

But the final outcome was indeed the same and therein provides the uniformity and consistency.

There is an opportunity here in Tasmania for the structural efficiency review to take place in a proper and calm atmosphere.

If we're given the 3% across-the-board it will provide that calm atmosphere for the structural efficiency review to take place. It will provide a workable wages system, so far as we are concerned.

I think it was very clear in the submissions made by Mr Willingham and Mr Jarman that in the Government sector unless our submission is picked up, that the Government intends to delay the increase by pursuing an award-by-award structural efficiency review.

Now it would seem to me, or anyone else in the community who is a reasonable person, that that would be a stupid process for the Government to undertake.

One hundred and thirty-four awards, and quite simply and quite obviously most of those awards have a direct

MR LENNON: relationship to each other. So an organisation the size of the Government that intended to take a structural efficiency review award by award, would not be doing itself a service, let alone the community.

Clearly it would need to have a structural efficiency across-the-board, having regard to all of the awards applying to the Government sector. And yet Mr Jarman stood before this Commission yesterday and said it was the preferred position of the Government that the review take place award by award.

Well certainly we wouldn't support that, nor would we think it in the best interests of Tasmania for that process to be undertaken in the Government sector.

There is no reason that was advanced by the Government yesterday for the 3% to be delayed. They have no idea, according to the Government advocates, as to what they even want in respect to structural efficiency.

And yet it has been detailed to some extent, so I'm advised, in the document of the Commissioner for Public Employment for the year ended 30 June 1987. At page 5 there's some idea of what the concept of structural efficiency review within the State Service would be and that is to be found at page 5 of the Commissioner for Public Employment.

So far as the private sector is concerned, Mr Abey hardly referred to the structural efficiency review at all in his submission. It was only after questioning from the Bench that we were really able to get some explanation from the private sector as to what they saw with that review.

All that leads us to believe is that our worst fears will be realised unless the Commission is prepared to make an across-the-board decision.

MR LENNON: And that is this (if I can give you a scenario): we have 134 private sector awards currently before us, and given that we would support the ... sorry, 134 public sector awards, if we take out the public sector nursing awards - and we would support, Mr President, the idea of those awards being set aside at this time - 74 private sector awards, totalling 208 awards operative within this Commission, plus agreements.

What the employers and the Government are suggesting is that each of those awards should be taken separately for the 3%. Now, if the Commission was able to dispose of one award a day, it would take 208 days for the last award, the poor award that got on the end of the line, to get the 3%, given that both the employers and the Government are arguing an award-by-award process.

There is no equity in that situation at all. It takes no account of the fact that the award at the end of the line, the employees covered by that award, may have agreed - may have agreed - to the structural efficiency arrangements at the same day that the first award does - employees in the first award. How is the Commission, under that process, to determine which awards it hears first?

It is also quite possible that most if not all of those awards will be appealed. If that happens, we go right through the process again. But more than that, if we are forced into that process, it will not set the right atmosphere around which a proper and structured review of awards could take place. We get the structural efficiency scenario off on the wrong ground, on the wrong foot right from the outset.

We can't expect employees to cooperate with employers and the Commission in a proper and detailed examination of the awards of this

MR LENNON: Commission under those circumstances. We will not have a workable wages system. We will have break-outs all over the place, because employees won't sit back and wait another 12 months for a 3% wage rise they are entitled to get now. It's the taking account of cost of living movements which are occurring now, not which are expected to occur more than 12 months down the track.

We have held together within the centralised system; we have accepted reductions in real wages as part of our commitment to economic recovery but we are not going to be overburdened with them. The process the employers are asking this Commission to pick up will not - will not - give us a workable wages system.

We believe that our word is our bond. History has shown it to be such. Where we have given the commitment we have, as a total union movement, and employees in this State, honoured it.

There have been very little, if any, requests of this Commission - certainly I am not aware of any - to remove the moneys in the last package because of break-outs by unions and because extra claims have been made. And that of course was open to employers under the last system.

1 September is not an unreasonable date for us to seek the increase from. As acknowledged by Mr Abey when questioned by the Bench as to whether or not he would accept retrospectivity, in the first instance he said he wouldn't but then, following on from that, admitted that in all likelihood they would agree to the building trades getting it from 1 September. So where is the equity in his own argument?

MR LENNON: In the one instance he says, `No retrospectivity' but in the next breath he says, `However, we will probably let the building industry have it'. Well, if it is good enough for building to get it now, it is good enough for everyone, on the simple proviso that the unions in the retail industry or in any other industry in this State are prepared to give the commitment to review the structure of the awards.

Now Mr Abey says, on behalf of the employers, that they are not seeking the details of how the structural efficiency will take place prior to the granting of the 3%. All they are seeking is the broad methodology as to how that will take place.

Well, we would say, Mr President, if that's all they are seeking, that is already encompassed within the Federal decision where they list six or seven items which aren't exclusive which could be encompassed within a structural efficiency review.

They may or may not be relevant to each and every award and agreement of this Commission. But certainly it provides the broad outline as to how the structural efficiency principle could and should operate.

If there are other aspects which aren't included in that which are relevant to particular awards, and we are only talking about getting the broad parameters agreed, then I don't envisage long delays. What is envisaged within the employers' proposal is that: long, long, long delays.

Take for example the scenario of discussions with the Government. One hundred and thirty-four awards; one hundred and thirty-four Cabinet meetings - presuming they have enough time in each Cabinet meeting to hear one award at a time. On top of that we have got a number of agreements applying in the Government as well.

MR LENNON: We are simply not going to get a workable wages system out of that sort of scenario. We wouldn't have learnt the lessons of the two-tiered system. We won't get the sort of reviews that the national commission, the ACAC, is envisaging within its structural efficiency principle.

We acknowledge that we ourselves haven't come to this Commission in these proceedings with details as to how we see it, because we want to listen to the employers, we don't want to dictate to them in proceedings like this as to how their industries can best be managed. We want to do it in cooperation with them, in a conciliatory mode, not in an arbitrary mode.

And I am sure this Commission as well wouldn't want to be sitting here and dictating to the employers as to how their industries can best be managed without first having the opportunity to examine in some detail the problems that they have got, how the awards affect the operation of the business, and how changes in awards can make their businesses more productive and more efficient.

That is a process which was envisaged by the ACAC; it will take some time. The ACAC didn't see itself sitting again until February to look at the progress. But nevertheless, we need to face the facts. In a number of key industries covering quite a few workers, agreements have already been established for the increase to apply from 1 September.

I guess we could have undertaken on an industrial campaign in this State to achieve the same ends.

MR LENNON: We could have done that. And in some areas we have linked ourselves to what's happened nationally.

But if we're going to have a workable system, a system based on equity, then we want 3% from 1 September, the $10 from 1 March. We don't want the delays that are inherent in the employers' proposal and we will sit down and work cooperatively.

Now our word in the past has been honoured. There's no reason that's been advanced by the employers to suggest: 1) that it hasn't been honoured in the past; and 2) that it won't be honoured in the future.

As I look through Mr Willingham's submission, I couldn't find a hell of a lot to reply to.

I want to take up one point Mr Jarman made in respect of multi-skilling, and I think this demonstrated clearly to the Commission the fact that the employers really don't know what they want. I mean, why anyone would say that on multi-skilling they would prefer an artificial removing of demarcation barriers only, in the first instance, and not want to look at designing and redesigning of jobs, I really don't know.

To say that they would prefer someone else doing the same function, a function which may well be outmoded and outdated for today's requirements, rather than being prepared to sit down and look at a job redesign ... multi-functional employees - super-tradesmen, if you like - if we look at the manufacturing sector, I really don't know.

I would have thought, being in ... if I was an employer that that would be the aspect that I would want to attend to most. And indeed, if I refer to the second part of Mr Jarman's definition of multi-

MR LENNON: skilling, that is an issue which to some extent was addressed in a lot of areas where it was a problem in the second tier and, secondly, is something which will be addressed in the metal industry at least, where it's been identified as a problem, in cooperation with the unions.

We're not frightened to address those sort of issues at all - under structural efficiency. We're not frightened of the agenda.

We're not trying to get a 3% increase and then run away from the difficulties that could be encompassed within a structural efficiency review.

We would ask the Commission, Mr President, to adopt our submission, to recognise what we have put, that the 3% and $10 are cost of living movements, that despite what Mr Abey says, that they akin to the first tier of the old second tier. In other words they are there to compensate workers in this State for increases in the prices of goods in recent times, and that the structural efficiency principle is something that we are prepared to address with the employers, and that we are prepared to address that under a monitoring process by this Commission.

And if the Commission believes it necessary, we would suggest that it could adopt this sort of process.

As soon as possible after the handing down of its decision, the Commission of its own motion would list the awards of this Commission for two purposes: 1) to get the commitments from unions that it requires for the system to July 1989 (and I've already given an indication to the Commission today of the sort of commitments that we are prepared to give); and 2) to give the opportunity for employers to place argument before this Commission

MR LENNON: on economic incapacity to pay.

We see that as the only criteria and that is in accordance with our own submission on economic incapacity to pay. That is the only criteria upon which an operative date beyond 1 September may be contemplated - not for awards, but for individual employers within awards.

PRESIDENT: How would employers bound by common rule awards be able to mount an incapacity to pay argument before this Commission, Mr Lennon?

MR LENNON: Well, they could either do it through their employer organisation, the Tasmanian Confederation of Industries, or be given ... we certainly would not oppose genuine cases being given the right to intervene to put their case.

PRESIDENT: We have no power at all, as I understand the Act, to hear other than registered organisations, except ... the only possible exception might be in the case of section 29 disputes. You might do it that way, but I think that's possibly the only way, but then it would require an award variation, and you can't do that under section 29. It is a problem.

MR LENNON: Where there's a will there's a way, Mr President.

PRESIDENT: They could always join their union, I suppose.

MR LENNON: Yes, they could. We would encourage that. And when they join their union their employees can join ours.

But, Mr President, I can't stress this enough, we see the only barrier and the only option for employees ... for employers, sorry, not to pay the 3% from 1 September as being an economic incapacity to pay argument - that is, capable of being argued

MR LENNON: within the principles. They would need to put a strong case. And we would say that, prima facie, they would need to be able to show that the implementation of the 4% or shorter hours or superannuation, or a combination of all of those, has taken place in a time frame such as to disadvantage them competitively with a further increase now.

And that was the thrust, I believe, of Mr Abey's submission on the 4% this morning. But there is no other circumstance upon which a delay of the implementation of the 3% should occur beyond 1 September, in our submission, and that the $10.00 should be available to employees from 1 March 1989.

MR LENNON: That provides a workable wages system, it provides the opportunity for the Commission to monitor the progress on structural efficiency between the two increases, and it commits the employers to sit down now and talk to us about structural efficiency, not to embark on a delaying exercise willingly or unwillingly, deliberately or otherwise, between now and 24 months down the track, as Mr Abey put it in his scenario.

And I acknowledge that the TCI was not saying that they wanted the full details of how the awards were to be restructured before the 3% applies.

But in practice - in practice - it would be different to that, of course.

For example, I mean, we sit down with the employers tomorrow with our broad list, which encompasses the National Wage Case decision - that's okay - we are prepared to review award `X', taking into account established skill-related career paths, or eliminating impediments to multi-skilling, or creating appropriate relativities, or ensuring working patterns and arrangements, or properly fixed minimum rates for classifications, or updating and/or rationalising a list of respondents to the award, or addressing any cases where award provisions discriminate against sections of the work force.

And the employers say that is not good enough. So we haven't an agreement, so we come here and put that to you, and we ask for 1 September operative date, and they argue for a prospective date - you arbitrate, and they appeal. We haven't got a workable wages system.

MR LENNON: We can't be expected to be forced into that sort of process.

If we are prepared to give the commitment to address the spirit and intent of this decision, we are entitled to the 3% now.

And, as we say, the only barriers that should prevent employees from getting the 3% from 1 September are the non-preparedness to give the commitment, and an economic argument on incapacity to pay, because the 4%, the shorter hours, or the superannuation have come too close to 1 September.

Now that is an argument. The onus is clearly on the employers to put that, not on us, nor is it on this Commission to make an assumption.

The principle is there. The fact that the employers have chosen not to use it in the light of it being within the principles is something that they have got to address, not something that we have to address.

Mr President, I don't think I have got anything else to add at this time, except to say, as I indicated in passing before, that we would not oppose the setting aside of the public sector nursing awards from these hearings and, secondly, well, I don't think there is anything to reply, frankly, with the Printing Trades Employers' Federation submission given the fact that the area they sought to set aside derived directly from the Federal award anyway.

And, thirdly ... sorry, there is one other thing I want to address, and that is the issue of retrospectivity again.

If I just come back to that. We believe it is imperative that this Commission does give itself the option to grant retrospectivity,

MR LENNON: particularly in view of the fact that we are prepared to acknowledge the right of employers to put argument on economic incapacity to pay.

If that argument takes some time ... (that's not a fire is it?

PRESIDENT: No, your time has almost expired.

DEPUTY PRESIDENT: It didn't come on yesterday.

MR LENNON: But given that we are prepared to accept the right of the employers to argue economic incapacity to pay only, and at that case if it is deemed by this Commission to have merit and therefore it wants to hear argument, or if it's deemed to be an arguable case and you want to hear further detail, then it may mean some delay in that particular award or that particular section of the award or for that particular employment place. At the end of the day the Commission may reject the argument and therefore should have the opportunity to grant the operative date and not be forced only to be able to give the decision from the date that the hearing is completed, or the date the decision is handed down.

So it is imperative in our view that you do grant yourself the discretion to apply retrospectively decisions of this Commission, something which has been pointed out at length by the Deputy President, which is in the Act, and it could in fact mean that you are not operating within your own jurisdiction if you don't allow yourself the opportunity to have retrospectivity.

I think, Mr President, that concludes our submissions at this time.

PRESIDENT: Mr Lennon, I think you on two occasions made reference to something like 134 public sector awards. I

PRESIDENT: won't ask you to recite them, but I'm curious to know where they are. I think it would be more like ... that would be the total ...

MR JARMAN: Mr Vines should know, sir, rightly or wrongly. His organisation would be party to most of them.

PRESIDENT: Yes. I think this Commission probably has 134 awards. I guess there are about 60 public sector awards, 62 or 63.

MR LENNON: I might have got the numbers mixed up, Mr President. That is something I will have to address.

PRESIDENT: I thought you were a good numbers man.

MR LENNON: Well, even if there is 62, there is still 62 weeks, Mr President. Sixty-two Cabinet meetings, so ... Anyway, that's ...

PRESIDENT: Yes, that's all right, it's just a point to be clarified. I just wondered what has been happening while I have been away.

PRESIDENT: It must have been the phantom army getting up their own awards ... individual awards.

Thank you, Mr Lennon. We will reserve our decision.

Oh, but before doing so, I think Mr Willingham has something to tell us, I hope.

MR JARMAN: Nearly.

MR WILLINGHAM: Right of reply to Mr Lennon's submission, or is that the question that the Deputy President wanted answered?

PRESIDENT: Weren't you going to get some instructions on something, Mr Willingham?

MR WILLINGHAM: Yes. Yes, I was.

There were two questions, I think, Mr President, yours going to some hypothetical situation potentially being without the provisions of the Audit Act.

I'm advised that all decisions by Government in terms of payment and conditions and wages is done with the consultation and the authorisation of the Auditor-General.

And on those rare occasions when something occurs inadvertently which is, in the Auditor-General's view, something that shouldn't have taken place, the matter is quickly brought to the public profile as well as the attention of the offending agents. It is dealt with according to the statute in the Auditor-General's report.

So in summary, sir, no decisions either having been taken thus far or projected for the future would be ultra vires to the Auditor.

That's not to say, sir, that some

MR WILLINGHAM: decisions that are taken do not fall into that category, inadvertently.

Mr Deputy President, your question, and the answer is fairly brief, I would hope.

I am advised that in direct response to your question whether the Government has removed the previous requirement from agreement - that is, the agreement signed, as I understand it, on 4 August - that payment of new salary rates is conditional on Commission approval, is correct. It was removed.

DEPUTY PRESIDENT: Thank you.

MR WILLINGHAM: Mr Deputy President.

PRESIDENT: Our decision is reserved.

HEARING ADJOURNED