

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T.2146 of 1989

IN THE MATTER OF AN APPLICATION
BY THE TASMANIAN TRADES AND
LABOR COUNCIL TO VARY **ALL
PRIVATE AND PUBLIC SECTOR AWARDS
AND AGREEMENTS** TO INCREASE WAGE
RATES AND ALLOWANCES GENERALLY
AND TO REVIEW THE WAGE FIXATION
PRINCIPLES

AND

T.2147 of 1989

IN THE MATTER OF AN APPLICATION
BY THE BUILDING WORKERS'
INDUSTRIAL UNION OF AUSTRALIA
(TASMANIAN BRANCH) TO VARY THE
BUILDING TRADES AWARD RE BASE
RATE FOR TRADESPERSON IN
DIVISION A. AND TO INCREASE WORK
RELATED ALLOWANCES

AND

T.2152 of 1989

IN THE MATTER OF AN APPLICATION
BY THE TASMANIAN PUBLIC SERVICE
ASSOCIATION TO VARY **NOMINATED
PUBLIC SECTOR AWARDS AND
AGREEMENTS** RE SALARIES,
ALLOWANCES AND AWARD
RESTRUCTURING

AND

T.2167 of 1989

IN THE MATTER OF AN APPLICATION
BY THE TASMANIAN TEACHERS
FEDERATION TO VARY **NOMINATED
AWARDS** TO INCREASE SALARIES AND
SALARY-RELATED ALLOWANCES

CONSEQUENT ON THE DECISION OF
THE AUSTRALIAN INDUSTRIAL
RELATIONS COMMISSION IN THE
NATIONAL WAGE CASE DECISION OF 7
AUGUST 1989

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT
COMMISSIONER GOZZI

HOBART, 10 October 1989

TRANSCRIPT OF PROCEEDINGS

(RESUMPTION)

PRESIDENT:

Yes, Mr Willingham.

MR WILLINGHAM:

Thank you, Mr President. Sir, if I may just summarise very briefly the evidence provided to the Commission yesterday by Mr Challen. Our submission is that that evidence gives the Commission, and indeed other interested parties, a fairly comprehensive outline of the state of Tasmania's economy, not only for this current fiscal year but of subsequent years - 1990-91 and beyond.

We say in essence that what Mr Challen put to the Commission yesterday underpins the government's position before this matter of insisting that the fullest possible productivity and efficiency gains are achieved from the structural efficiency principle, and we would hope that Mr Challen's evidence has indicated to you why the government believes so forcefully that that must be achieved.

Mr Challen also outlined, or he touched upon, the options which were available to the government if productivity and efficiency gains do not materialise as a result of the structural efficiency principle.

But what we say, again in summary in relation to Mr Challen's evidence, is that it explains the reasoning behind and the actual submissions that the government has put to both the National Wage Bench and to this Commission in the course of the State Wage Case.

If I may remind the Bench of our submissions on 21 September as contained at pages 49 and 50, the transcript thus issued, and just reiterate that our position in relation to the first instalment of the structural efficiency increase is that:

"The first instalment of the
structural efficiency

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PRESIDENT - WILLINGHAM

MR WILLINGHAM:

increase should be conditional upon the establishment of agendas and timetables for implementation of award restructuring as well as broad agreements between the parties on the contents of the packages".

And the Bench will recall that we drew support for those submissions from references from the National Wage Case decision H9100 at pages 8 and pages 21 and continue to seek to rely upon those extracts quoted.

Sir, we repeat that the government favours the service-wide approach to structural efficiency and award restructuring inherent in Mr Lennon's application for reasons which we have detailed at some length before the Commission. But, we repeat that if we are unable to reach agreement on the basis of what Mr Lennon has proposed, that is, the service-wide approach, we have no qualms about adopting an award-by-award approach to structural efficiency or indeed groupings of relevant awards or indeed groupings of relevant enterprises within the public sector.

But we make it clear that if it is feasible, if it is achievable, we would prefer the service-wide approach and that would, Mr President, in relation to a remark that fell from you yesterday, of course from our perspective, include employees covered by both federal and State awards, whilst all parties appreciate of course that you can only determine those matters within your own jurisdiction.

Sir, can I just refer you to a number of decisions that have already been taken by State and federal tribunals, both as the National Wage Case and the State Wage Cases and decisions which have subsequently ensued from those tribunals.

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WILLINGHAM

MR WILLINGHAM:

I only intend to take you to two. The first is the Industrial Commission of South Australia in its State Wage Case of September 1989, and its reference is Print I69 of 1989. It was before the full Industrial Commission. The decision was issued on 22 September.

And turning to the requirements that in the South Australian Commission's view were necessary for the first instalment, that decision reads at page 5 and I quote:

"In our view it will not be sufficient to obtain the salary or wage adjustment under that principle [the principle being the structural efficiency principle] for the parties to simply come to the Commission with an agenda for discussion concerning fundamental changes to an award. That exercise should have been undertaken prior to now, following on the August 1988 State Wage Case decision.

The triggering mechanism to justify the first wage adjustment under this principle must be an actual variation to the award which variation is designed as a first step towards structural change.

The Australian Commission has made it clear that the first increase will be accessible from 7 August 1989 but the actual date of operation of an award for a salary or wage increase will be the date on which that award is varied in accordance with the National Wage Case decision August 1989.

We do not consider that there is any automatic entitlement

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WILLINGHAM

MR WILLINGHAM:

to the first increase even if the parties have reached agreement on structural changes.

Before the Commission will vary the award and authorise payment of the first increase, it will need to be satisfied that the changes to the award are designed to bring about real and not illusory benefits, those benefits which will both modernise the award and are intended to bring about improvements in efficiency and productivity. Until those conditions are satisfied the Commission will not grant an increase. We emphasise that it is not change alone which will justify increases in salaries or wages."

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WILLINGHAM

MR WILLINGHAM:

That particular passage of the South Australian decision, Mr President, and members of the Bench, goes on to refer to a decision ensuing from the Industrial Relations Commission in matter Print H9530, which is the National Building Trades Construction Award and Other Matters.

If I can just briefly quote from that, Mr President, and members of the Bench, at page 14 His Honour Justice Ludecke said:

"The submissions of the objecting employer bodies raise an important question in relation to the implementation of the structural efficiency principle.

The Commission has made it clear that mere changes in award prescription are not enough. There must be change in fact, evidenced by increased flexibility through changing employment conditions and work patterns, and by employee mobility, education and training.

Changes which are translated into award variations are the visible means of reflecting workplace reform, and will demonstrate the successful implementation of the principle.

But not all changes lend themselves to award prescriptions or variations. There will be some initiatives which are equally important manifestations of reform, and they will be just as important in their contribution to the objective of increased productivity and efficiency, but they may not appropriately be the subject of award prescription.

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WILLINGHAM

MR WILLINGHAM:

It is necessary when considering an application for a first adjustment under the principle to have regard to the whole of the evidence, not only that in support of immediate award variation.

If it can be concluded that the parties have produced tangible evidence of a genuine reform program which has been progressively developed and applied, the requirements of the principle will have been satisfied."

PRESIDENT:

That almost sounds like no increases, nohow.

MR WILLINGHAM:

They are the sorts of guidelines to the parties which we believe are entirely appropriate, with respect, Mr President, for this Commission to adopt.

Sir, we make the point that in all of the proposals, as we understand them, that are currently before you, the Commission has no recast awards for consideration.

It has a number of proposals in varying stages of agreement or disagreement, but it has not one award structure containing the classifications and the salaries sought to be attached to those classifications.

PRESIDENT:

Not even the Librarians?

MR WILLINGHAM:

I am not aware that that is a part of this exercise, Mr President.

PRESIDENT:

But it has been recently restructured, hasn't it?

MR WILLINGHAM:

It is not part of this particular case, neither is it part of the applications submitted by either the TPSA or the TTLIC, Mr President.

PRESIDENT:

But if we took that as a case in

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PRESIDENT - WILLINGHAM

PRESIDENT: point, you would be submitting that notwithstanding an in-depth review by a member of this Commission, that award still requires further restructuring.

MR WILLINGHAM: That is not my submission. My submission is that that matter is not before the Commission. It has been determined by the Commission.

PRESIDENT: But the award is before the Commission.

MR WILLINGHAM: The award is before the Commission in respect of the general application for a 3% first instalment. There is nothing before the Commission in respect of that award, or any other award, which would show the Commission, or indeed the government, just how the applicant parties seek to have the award adjusted.

Indeed I might add, Mr President, in that particular matter to which you refer, Mr Commissioner Gozzi made much the same sort of comment. He looked forward to seeing just how the parties worked their way through it when the structural efficiency principle was applied.

Can I also say, Mr President, that as we understand the national wage decision, and previous national wage decisions and previous State Wage Case decisions, there is a requirement once this Commission has announced the principles which it will adopt that parties make commitments to those principles.

It is my understanding that at this point in time you have no indication from the trade union movement collectively, or trade unions individually, that such commitment will be forthcoming.

We believe, with respect, that it is appropriate that the Commission satisfies itself, having announced that it will adopt the national wage

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MR WILLINGHAM

case decision mutatis mutandis, that there is in fact an undertaking to commit itself to those principles.

Sir, we conclude our remarks simply by this: Mr Lennon has referred to the government's approach as a 'negative cost-cutting approach'. We refute that suggestion and close examination of the proposals that are on the government's agenda will clearly show that it is not a negative cost-cutting approach - whatever that particular expression means - but in any variation, any interpretation of that phrase, we repudiate Mr Lennon's assertion.

Mr Lennon said, when dealing with the pharmacists' matter yesterday, that 'the system is productivity and efficiency based to match the increases being sought', and we agree with him.

Sir, so there can be no misunderstanding of the government's position, it has been relayed to the Trades and Labor Council and its affiliates, as of today, and we think it is important for the public record, Mr President, that the Commission is similarly informed, and I would seek to table correspondence to Mr Lennon of date, and an attachment which outlines in crystal clear terms the government's current position in relation to the negotiations.

PRESIDENT:

W.5.

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PRESIDENT - WILLINGHAM

MR WILLINGHAM:

Mr President, I draw your attention only to one aspect of W.5, that is the final paragraph of the Minister's letter which says, and I quote:

"I assure you that the government's negotiating team is available to meet with your representatives at any time in attempting to move closer to a mutually acceptable agreement which could then be submitted for ratification by the Tasmanian Industrial Commission".

Sir, with considerable respect to the processes that have been followed so far, we do not believe that the conciliation process has been thoroughly exhausted either by the parties or, with respect, by the Commission.

The Commission indicated yesterday that subject to hearing further submissions today, it intended to adjourn this matter and would, if necessary, arbitrate the outstanding matters. We believe that recourse should be had to the conciliation process which is available to the Commission and indeed to the parties.

We point out that the total negotiations in this matter have extended over 2 days - 2 days of last week - when this Commission adjourned on 21 September last, and there have been no discussions in a formal or an informal sense outside of that period of time.

We've come back before the Commission after the best part of a 3-week adjournment and in all of that time the proposals by the Trades and Labor Council, which were first put to the government on 18 September, have received 2 days' formal negotiation to reach the positions which are outlined to you in W.5 and TTLC.4.

With respect, Mr President and

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MR WILLINGHAM:

members of the Bench, we believe it is open to this Commission to exhaust the conciliation process by at least considering the option available of convening a conference of the parties, at which this Full Bench would preside, to discover whether by encouragement or any other form of guidance the Commission could bring this matter closer to resolution before the need for arbitration needs to be resorted to.

With those comments, Mr President and members of the Bench, thank you, that concludes my submission.

PRESIDENT:

Thank you, Mr Willingham.

Mr Pearce, have you not already addressed the Commission?

MR PEARCE:

I have in respect of primary matters, Mr President, but just prior to the luncheon adjournment yesterday, Commissioner Gozzi indicated a desire to hear the position of the government in respect to the question of operative date, it being an issue which we had not earlier addressed our submissions to but, clearly, if the Commission is minded to arbitrate on the question of operative date, we would like the opportunity to put forward the view of the government in respect to that particular matter.

PRESIDENT:

Well, you simply wish to address us on the question of operative date of any order?

MR PEARCE:

Operative date and the manner in which operative dates derive from consideration by tribunals of factors relevant to structural efficiency exercises. They are mutually together.

PRESIDENT:

I thought I made it clear yesterday afternoon that reference in the TTL document to the principles, to a date (I think it was 7 August) should be understood to mean, so far as we were concerned, from the date of

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PRESIDENT - WILLINGHAM - PEARCE

PRESIDENT: decision. That is to say, the principles would operate from the date of decision and so far as the structural efficiency was concerned, I would imagine that particular principle would indicate that the first instalment would be available from date of decision and then go on to indicate as the federal decision did.

MR PEARCE: Well, I don't know whether we're necessarily a part ...

PRESIDENT: Did you find that confusing?

MR PEARCE: Well, I would certainly be reluctant to resume my seat if ...

PRESIDENT: You may have to.

MR PEARCE: ... it eventuated that the proposition put forward under TTLC.4, that there merely be agenda items considered in relation to awards which are not before this Commission.

It was my intention to bring to the attention of the Commission the salient features of the Federal Commission which inextricably link the question of operative dates arising after a review of structural efficiency measures and that there is no provision in our submission for the Commission to merely review the positions of two parties, particularly non-consenting parties, and determine on the basis of that whether or not there is a uniform operative date.

....

BREAK IN TRANSCRIPT DUE TO
MALFUNCTION OF TAPE

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PRESIDENT - PEARCE

PRESIDENT:

Yes. Well now, where were you, Mr Pearce?

MR PEARCE:

Just before that example of technological advancement, I was about to make the point that at the time of the minister's initial submission the issue of TTLC.4 was not before this Commission and was not a document upon which the minister had the opportunity to make comment.

It is central to the theme of that document that it would seek a uniform operative date in ... relative to matters upon which the parties ... upon which the government as a party is not agreed.

Hence, we would like the opportunity to make further submissions and in so doing rely upon the desires of Mr Commissioner Gozzi to be so addressed.

PRESIDENT:

What do you say, Mr Lennon?

MR LENNON:

Well, Mr President, I believe that the Minister for Public Employment had ample opportunity to canvass the question of operative date in ... well after TTLC exhibit No.3 was introduced which was, of course, at the first hearing.

TTLC.4 arose out of discussions that we were directed to have with the government by the Commission and I reported on those yesterday, and I notice that most of what I said yesterday has now been backed up by an exhibit that's been introduced by the government today.

And I just don't believe that there's anything useful going to be served by listening to the Minister for Public Employment's trampling through the jungle on operative date. It's not going to resolve the outstanding issues which is what we're here to do now.

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PRESIDENT - PEARCE - LENNON

PRESIDENT:

Yes. Thank you. Just bear with me for a moment.

We're prepared to hear you on that, Mr Pearce.

MR PEARCE:

I'm indebted to the Commission.

It is to be hoped that our submission will be viewed as being sufficiently persuasive such as to cause the Bench to conclude that our position is to be preferred to that recommended by Mr Lennon of the combined public sector unions.

Having had regard to the principles of wage fixation by reference to Print H9100, including the intended reasoning, it is our submission that neither of those areas ... that in neither of those areas is the specific question of uniform operative dates contemplated in the absence of properly reviewed structural efficiency exercises.

Indeed, we would submit that there is a substantial comment throughout the decision which lends support to our submission that operative dates might otherwise be considered in the context of individual award reviews.

This Commission has adopted, mutatis mutandis, the federal decision. It is therefore respectfully submitted to be assumed that the Commission in so doing has, by implication at least, also adopted the reasoning attaching to that decision.

If our submission on that aspect is not misguided, then we further submit that the decision does not provide the opportunity to import a uniform operative date concept, leastways not in respect to non-consenting parties.

To adopt a common operative date without prerequisite conditions, in our view, would be inconsistent with

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PRESIDENT - PEARCE

MR PEARCE:

the Federal Commission decision and supporting reasons.

We submit that the National Wage Case Full Bench has gone to some lengths to emphasise that the success of the structural efficiency principle lies essentially in individual award reviews.

This contrasts with the TTLC preferred position of blanket operative date description for each award, irrespective of the craft, industry or enterprise for which the award has been established and regardless of the need to test structural efficiency proposals against certain criteria.

Clearly we are concerned at the prospect of this Commission enforcing, through arbitration, a common operative date in respect of non-consenting parties.

With that concern foremost in the government's mind, I wish to submit the further consideration of the Commission certain features of that federal decision upon which we rely in support of our view that a uniform operative date in isolation from other factors is not an option available in the terms of that decision, particularly by force of arbitration.

And turning to page 2 of the federal decision, the last paragraph, I quote:

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MR PEARCE:

"In the current proceedings, therefore, there are two main issues. The first point, the quantum, timing and basis of any wage increase to be made available for effective structural efficiency exercises".

We conclude, in respect of that particular point, that from the outset the Commission has identified timing of the wage increase to be an integral consideration of the structural efficiency exercises and linked to effective structural efficiency exercises.

These aspects are then taken up during the course of the Full Bench summary of the varying submissions on structural adjustment claims.

Turning to page 3 under the heading 'Structural Adjustment Claims', I quote, and referring to the claim of the ACTU midway through that paragraph:

"... submitted that such increases should be available on individual award variation consistent with the structural efficiency principle in the first half of 1989-90".

In the second paragraph the Bench then went on to state:

"These claims [that is the claims of the ACTU] were consistent with an agreement between the ACTU and the Commonwealth reached on 7 April 1989 and were supported by the Commonwealth in these proceedings".

Further in that paragraph, the Bench identified other National Wage Case participants who had supported the ACTU claim. They included the governments of Victoria, South

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MR PEARCE:

Australia, Tasmania, the ACT, together with the MTIA, AFCC, MBC and HAA, the Plumbing Employers Industrial Secretariat and the Fire Sprinkler Contractors' Association of Australia.

The Bench, in the next paragraph, noted the position on quantum advanced by the CAI and went on to identify their submission on timing as it related to wage increases, a point I quote:

"They [that is wage increases] should not precede implementation of the results of individual structural efficiency exercises".

Paragraph 5 on page 3 reflects the position of the Business Council of Australia in these terms:

"The BCA did not oppose wage increases on the completion of structural efficiency exercises".

On page 4, at the top, the Bench adverting to the position of the Queensland Government summarised their submission as being, and I quote:

"An increase could be approved if the Commission was satisfied that significant progress had been made toward restructuring a particular award".

To recap, there is clearly a common and consistent thread running through the submissions of a variety of major participants representing a broad spectrum of interest.

Abridged extracts on the issues of increases include: 1) available on individual award variation or, not to proceed implementation of individual structural efficiency exercises or, on the completion of individual

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MR PEARCE:

structural efficiency exercises or, when significant progress had been made towards restructuring a particular award.

Clearly, we submit that the Full Bench were motivated by those expressions and those positions in determining that wage increases would be affected but conditional upon prescribed requirements having been met.

In the words of the Bench, to be found on page 7, in the last paragraph, and I quote:

"Consequently, it is our decision that an adjustment in rates of pay will be allowable for completion of successful exercises under the structural efficiency exercise".

It follows, in our submission, that in the first instance there should be structural efficiency matters before the Commission so that the tribunal can attest to their success or potential success and that increases in wage rates will follow by a positive finding.

PRESIDENT:

Does it follow from that, Mr Pearce, that those for whom you now appear are suggesting that this Commission should not approve the agreement in the private sector, for the reasons you've just given us?

MR PEARCE:

No, I'm not advancing that proposition, necessarily, Mr President. I will go not directly to that particular agreement, but I'll be adverting to the capacity for the Commission to take into account groups of awards or elective awards where the Commission may be persuaded, having regard to the principles that it has adopted, whether or not those sorts of matters may or may not fulfil the tests of the principles.

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MR PEARCE:

Commenting upon the likely labour cost impact of their decision, the Bench identified five factors which are to be found at the top of page 8.

The two which are relevant to our submission are the first two named: '1. Dates of operation of award variations' and the next succeeding one 'The extent to which translation arrangements from the old to new classification structures and their timing result in actual wage increases'.

We submit they lend support to our submission that phased in implementation is a deliberate and key feature of the federal decision, influenced by considerations of timing on the one hand and the need for staggered economic outcomes on the other.

They represent, we submit, justification for the government's current position that the dates of operation for award variations in relation to matters in this jurisdiction should be non-specific in terms of the State Wage Case principles. Rather, dates of operation should be left open to be determined as a consequence of successful structural efficiency exercises.

Primarily, structural efficiency exercises should be reviewed on an individual award basis, but with the capacity to look at groups of awards, or collective awards, where there is a community of interest.

In any event, the overriding consideration should be that an award, or awards, should be before the Commission to enable the propositions developed by the parties to be considered: 1) in the light of the terms of the principles and, 2) in light of the terms of the proposed award restructuring arising essentially from workplace reform.

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MR PEARCE:

Reinforcement of our submission on the themes of timing and the need for the Commission's evaluation of structural efficiency exercises is to be found at paragraph 3 on page 8, where the Bench talk of the first instalment increase.

From paragraph 3, and I quote:

"We have decided that the first increase should be accessible from the date of this decision. However, the actual date of operation for an award will be the date upon which that award is varied, following an examination by the Commission of the proposals for restructuring and the giving of commitments".

This matter, of course, forms part of the principles and reference to that can be found at page 20 under the heading of 'Wage Adjustments (1) Structural Efficiency Adjustments (iii)'.

In our submission that statement leaves little room for equivocation: 'increases to operate from the date the award is varied; variation to follow an examination of restructuring proposals; the giving of commitments'.

The following paragraph incorporates, in our submission, other reasoning adopted by the Bench in support of their primary position on timing of award variations.

Page 8, paragraph 4, and I quote:

"This is consistent with the submission of the Commonwealth that the taxation and social wage measures being implemented as part of the ACTU Commonwealth Agreement would allow a much

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MR PEARCE:

needed breathing space for the development of genuine award restructuring initiatives, thereby consolidating the new directions in wage fixing laid down by the Commission".

Incidentally, the quote 'the development of genuine restructuring initiatives' is something to which we fully subscribe and should be contrasted with the mere undertakings elicited from the combined public sector unions where they agreed to a review and/or investigation of a majority of the agenda items.

Certainly we submit their position falls considerably short of providing a genuine commitment to materially act to overcome impediments to, or to implement beneficial workplace or service-wide work-oriented reforms.

On page 9 of Print H9100, dealing with the economic implications at the fifth paragraph, the Commission allays fears of short term adverse effects on the economy, and I quote:

"Providing that the implementation of award changes proceeds in accordance with this decision ..."

The conclusion to be drawn is the potential adverse economic impact if implementation does not proceed in accordance with this decision.

Hence, we submit that departures from procedures determined under that decision may, as a consequence, have the potential to impact adversely relative to the economy.

That statement, of course, reflects a national view, however, of no lesser concern is the particular vulnerability of this State's budgetary position.

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PEARCE

MR PEARCE:

As put forward by Mr Challen, there is an inbuilt expectation that the overall effect of a 6% increase will be offset through productivity, efficiency measures, available through genuine structural efficiency exercises.

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PEARCE

MR PEARCE:

It is an important feature of the principles upon which the government is reliant as a factor contributing to the lessening of the raw cost effect.

PRESIDENT:

Mr Pearce, I've been very patient with you to date, but I must remind you that at page 6 of the transcript Mr Lennon made it clear that he was seeking an across-the-board increase in the private and public sectors. He refers to it again at page 9. Now I've been waiting for you to tell us what arose out of TTLC.4 that requires you to address us again.

MR PEARCE:

First and foremost, Mr President, TTLC.4 was not before the Commission at the time that the government placed before it its initial position.

Mr Lennon sought then to introduce it in his right of reply. To our mind that represents a new position or new evidence and we would submit it would be a denial of natural justice if we were to be denied the opportunity to give comment to that and, furthermore, in conformity with the request, Mr Commissioner Gozzi, for an explanation of the attitude of the government on the matter of operative date.

COMMISSIONER GOZZI:

Mr Pearce, you've mentioned my name several times and I really have to say to you that I was of the opinion that this State Wage Case was about (a) the adoption by this Commission of the federal principles with suitable amendments and secondly, as outlined in the transcript in the claims before us as differently framed about the application of the first instalment. And there is no doubt whatsoever in my mind that the application of the first instalment is agreed in the private sector and it is sought in the public sector. And the transcript makes that

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PRESIDENT - COMMISSIONER GOZZI -
PEARCE

COMMISSIONER GOZZI:

perfectly clear.

Now all the way through these proceedings a great deal of time has been devoted to that issue. We've had exhibits before us - W.1, TTLC.3, TTLC.4, pursuing that position.

Now it's not something new that cropped up yesterday afternoon.

MR PEARCE:

No, but the statement from the President just prior to lunch yesterday in which he indicated that the Commission had adopted the 'in principle' federal decision and that it would then seek to determine those issues upon which the parties had not or were unable to agree.

COMMISSIONER GOZZI:

See, Mr Pearce, could I say I regard - and you please correct me if I'm wrong, because I'd certainly not want to be under any misapprehension at all - but I regard the position you're now putting as a fall-back position to the preferred position of the government.

The preferred position of the government, as I understand it, is to have a uniform operation of the first instalment. That is made clear by Mr Willingham at page 49 and 50 which he drew our attention to. He said it just a moment ago and it seems to me that you are advancing a fall-back position if against that ... against the likelihood, if you like, of us adopting the proposition put forward by Mr Lennon on behalf of the public sector unions.

And you're drawing to our attention that in your opinion the agendas and so on that have been put forward in TTLC.4 are not appropriate.

Now that's been done yesterday afternoon, through the evidence of Mr Challen and submissions that have been made.

I think we've got to come to a view

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COMMISSIONER GOZZI - PEARCE

COMMISSIONER GOZZI: on that after we've heard the right of reply from Mr Lennon.

MR PEARCE: Well I did indicate during the course of the submission that it may be appropriate that collective awards, groups of awards, come before the Commission, where there was a community of interest, and certainly the position of the government in relation to what it is seeking to achieve by way of structural efficiency exercises through the negotiations with the TLC is for primarily a service-wide agreement.

But in the absence of agreement the principles tend to talk relative to individual award variation, and presumably ...

COMMISSIONER GOZZI: There is no argument about that.

MR PEARCE: ... in respect of individual award variation that would include negotiations of individual unions.

MR LENNON: Mr President ...

PRESIDENT: Yes Mr Lennon.

MR LENNON: ... either the Minister for Public Employment, who I understand is the Premier, supports Exhibit W.5 or he doesn't, I think.

At page 5 of W.5, the Minister for Industrial Relations proposes an operative date for all public sector awards for 1 January 1990, although this could be capable of amendment dependent on the extent of agreement reached in the overall package. So they don't even propose that we need agreement on the overall package. It could be some measure of disagreement and still access it across-the-board if you want to read that in one particular way.

Now I don't understand what these submissions are designed to do, but either the government has one

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MR LENNON: position or it has two. If it has two positions we are entitled to know that.

PRESIDENT: Yes, Mr Pearce.

MR PEARCE: It's primary position is that it will bring before this Commission, either individually or collectively, awards together with structural efficiency matters which have been developed by negotiation for consideration of those measures to be tested against the awards which are sought to be varied. It may be done collectively or individually, but the thrust of this particular submission is that primarily the National Wage Case decision talks about variations to awards on an individual basis.

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PRESIDENT - LENNON - PEARCE

COMMISSIONER GOZZI:

I mean, nobody is arguing with you, Mr Pearce, on that. It really comes down to a question of whether or not this Bench, as constituted, accepts what's in TTLC.4 or not.

Now if it does, I suppose there could be problems for you, but if it doesn't, I guess the approach that you are advocating might most likely flow.

MR PEARCE:

Well, if I am satisfied that the Bench has an appreciation of the position that is being put forward to it on behalf of the Minister, then I would rest my submission at that stage.

Essentially what we are saying is that there is no ... or there ought to be no room for departure from the propositions and the reasoning advanced by the federal decision where it didn't specify a uniform operative date.

PRESIDENT:

But you are not opposing the agreement reached in the private sector?

MR PEARCE:

That is going to be a matter to which this Commission is going to presumably test in relation to the specified criteria within the 'in principle' decision which it has adopted.

PRESIDENT:

But if we accept your submission, we should reject it.

MR PEARCE:

No, because ...

PRESIDENT:

You can't have it both ways.

MR PEARCE:

There is ... the contrasting positions between the government and the TLC is that there is no agreement. That contrasts with the position between the TCI and the TTLC where there is agreement.

PRESIDENT:

Well then, is that what you are

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PRESIDENT: saying, Mr Pearce? Where there is agreement it might be all right to have an across-the-board or a common operative date, but where there is no agreement it should be award by award?

MR PEARCE: The principles lend themselves to the opportunity for an award-by-award review.

PRESIDENT: And can you read that into the federal decision?

MR PEARCE: Read what, Mr President?

PRESIDENT: Where there is agreement you could have a common operative date.

MR PEARCE: Well, that would be consistent with our submission in relation to a collective of awards where there was a community of interest. It would ...

DEPUTY PRESIDENT: Do you think there is a community of interest in all of the private sector awards?

MR PEARCE: That's for the Commission, with respect, to determine.

DEPUTY PRESIDENT: Do you have a view on that?

MR PEARCE: I don't know the position on negotiations which have gone between the parties.

DEPUTY PRESIDENT: You would neither support nor oppose, is that right?

MR PEARCE: I think that would be one option that one could conveniently adopt.

DEPUTY PRESIDENT: You decline to answer?

MR PEARCE: If the Commission has no further need of me to respond, if I might leave my submission as it stands.

DEPUTY PRESIDENT: I have one. I think it is probably my turn.

Do you have a position, Mr Pearce, in

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DEPUTY PRESIDENT:

relation to the principles requiring that structural efficiency exercises must or must ... should or should not, result in a cost neutral effect?

We were told yesterday by Mr Challen in his evidence, which you heard, that (as I understood it) there was some anticipation, some expectancy, that there would be ... it would be possible to write off, or offset, a good proportion of structural efficiency exercise in the future.

Is there anywhere in the principles that it says ... that you can find, that such an exercise has to be cost neutral, or partly so?

MR PEARCE:

Not by the use of those descriptive type of words, but with the clear intention of the structural efficiency principle to provide for productivity, come, efficiency measures.

One assumes that they will be the yardstick by which the success or otherwise of the principle may be ultimately established.

DEPUTY PRESIDENT:

I'm sure I read that the Commission acknowledged in its decision ...

MR PEARCE:

That there would be some cost to employers.

DEPUTY PRESIDENT:

No, I am sure it acknowledged in its decision in Print H9100 that in some instances there would be no cost saving.

MR LENNON:

Special cases.

DEPUTY PRESIDENT:

Special cases, is it?

MR LENNON:

Teachers in particular.

MR PEARCE:

Well, in relation to special cases, we are yet to be fully informed by the TLC as to what special cases and work-value matters they would consider would come within the terms

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DEPUTY PRESIDENT - PEARCE - LENNON

MR PEARCE: of the structural efficiency
proceedings.

DEPUTY PRESIDENT: Yes, I think you will find at the
bottom of page 16, Mr Pearce, the
reference that I was looking for.

DEPUTY PRESIDENT:

Where it says:

"We recognise that there might be some workplaces where the objectives of the structural efficiency principle have already been achieved and there is no scope for further efficiency improvements. We would expect such instances to be rare."

MR PEARCE:

Yes. Well we would certainly anticipate that in such instances they would be rare, but of course we're yet to be advised by the TLC as to which or what areas might be considered to be part of special cases or work value to be considered outside the context of structural efficiency. So it's hypothetical for me to provide a view on that specific aspect in the absence of any substantive material.

DEPUTY PRESIDENT:

If we could just go back to your situation in relation to the private sector deal. Do you have a position in relation to that? Do you support that case, do you oppose it, or do you have no position at all?

MR PEARCE:

It is inconsistent with the position taken by the government in relation to its negotiations.

DEPUTY PRESIDENT:

I know that.

MR PEARCE:

But mere consistency doesn't necessarily make it right or wrong. That is for the Commission to determine.

DEPUTY PRESIDENT:

Well, you don't oppose it?

MR PEARCE:

No. I think it would be ...

DEPUTY PRESIDENT:

I don't ask many questions.

MR PEARCE:

No, but the ones you do are clearly the most penetrating though, as it is, Mr Deputy President.

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DEPUTY PRESIDENT - PEARCE

MR PEARCE: In essence, no, we would not oppose the agreement reached between the TLC and the TCI, but we would submit that that agreement would need to be tested by the Commission against whatever criteria is developed within the terms of the principles.

DEPUTY PRESIDENT: Thank you.

COMMISSIONER GOZZI: I'll ask mine on that, Mr Pearce. Mr Willingham did suggest that there may be room for conciliation and some conference on W.5 and TTLC.4. What's the Minister's position on that?

MR PEARCE: No less different than that advanced by Mr Willingham on behalf of the Minister for Employment, Industrial Relations and Training. Yes, we are certainly prepared, as the last paragraph of the letter to the TLC indicates ... prepared to exhaust and look at further negotiations if that may achieve anything.

COMMISSIONER GOZZI: Thank you.

MR PEARCE: If it please the Commission.

PRESIDENT: Thank you, Mr Pearce. Mr Lennon?

MR LENNON: Mr President, I would seek about a 10-minute adjournment, particularly in view of the comments made by Mr Willingham in the submission this afternoon at W.5, and where he drew the Commission's attention to the last paragraph of the letter.

We received this letter just prior to lunch today, just prior to 12.00, so we haven't had the opportunity to examine the thing ... give it the full weight that it deserves.

So I just wondered if perhaps we could reconvene at 3.45.

PRESIDENT: Yes.

MR LENNON: Thank you.

10.10.89 DEPUTY PRESIDENT - COMMISSIONER GOZZI
- PEARCE - LENNON

...

PRESIDENT:

Yes, Mr Lennon?

MR LENNON:

Thank you, Mr President. In summing up the TTLC application, I want to address my remarks to four areas in particular.

Firstly, the application by the Pharmacy Guild to argue incapacity to pay for Divisions B and E of the Chemists Award.

I've had to amend the second point in view of Mr Willingham's submissions this afternoon. I had written here the Government's rejection outright of TTLC exhibits 3 and 4, but it appears overnight there's been a backdown and it's no longer an outright rejection of TTLC.4.

And, three, the Government's contention that the Commission has not the ability to award an across-the-board increase with a common operative date to access the first instalment. And, finally, the economic evidence tendered by Mr Challen.

I'll come to the first issue. In response to the submission by Mr Edwards on behalf of the Pharmacy Guild, I want to remind the Bench of the decision of the State Wage Case handed down on 22 July 1986 in response to T.432, 435 and 440 of 1986.

At pages 22 and 23 of that decision the Commission had this to say about economic incapacity applications.

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MR LENNON:

Quote:

"As we have decided that we will be putting our imprimatur on new Principle 12 - Economic Incapacity, there will now be available to those who wish to defer, reduce or avoid the burden of national wage or other labour costs determined in accordance with the wage fixing principles of this Commission, a mechanism for seeking that kind of relief.

However it must be emphasised that:

(a) the merit of each application will be determined in light of the circumstances of each case;

(b) the onus will be heavily upon each applicant who pleads incapacity to prove his case;

(c) the applicant must be prepared in any case to submit all relevant information relating to alleged incapacity to meet a particular labour cost. The applicant must also be prepared for that material to be subjected to rigid testing by the Commission; and

(d) any application lodged with the intention of delaying, reducing or excluding a national wage adjustment otherwise due which fails to achieve its purpose, in the absence of merit, will result in the increase objected to being made operative from the same date determined by this Commission as applicable to awards generally."

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MR LENNON:

And having said that, Mr President, members of the Bench, I simply remind you that in the case of the Chemists Award, Divisions B and E, so far as we're concerned - and it certainly hasn't been objected to by the TCI who represent the Pharmacy Guild in this matter - that the agreement will apply to them, subject to them meeting the tests required of the Commission on economic incapacity to pay grounds. And we would ask that the decision of July 1986, to which I've just referred, apply to them.

The Government's rejection of TTLC.3 and TTLC.4, which is the second point I want to address ...

The two exhibits tendered by the TTLC when taken together are, in our view, an acceptable proposal for restructuring in the State Service. Our proposal addresses, in a positive manner, all of the requirements of the structural efficiency principle.

Furthermore, our proposal is yet another demonstration of the union movement's commitment to contribute to the improvement in Tasmania's and Australia's economic performance. It is a demonstration of the contribution, we believe, that the restructuring and efficiency principle can play in accelerating improvements in our economic performance.

Regrettably, the Government has rejected our proposals. No evidence was tendered by them as to the reasons why.

As such, there is nothing of substance for us to refute. However, it is useful to restate the fundamental features of our proposal.

It provides for: (a) a fundamental review of job classifications and functions; (b) the elimination of impediments to vertical and

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horizontal skilling and a broadening of the range of tasks within a classification which a worker may perform; (c) the creation of appropriate relativities between different categories of workers within awards, agencies and across the Service; (d) the provision of working patterns and arrangements that enhance flexibility and the efficiency of the State Service; (e) the rationalisation of the number of existing awards applying in the State Service; (f) a properly fixed minimum rates for classifications in awards related appropriately to one another; (g) the appropriate rectification of any case where existing provisions discriminate against sections of the work force; and (h) an approach to restructuring which will incorporate examination of the existing classification structure to determine any problems and scope for change.

The scope for rationalising trade and occupational streams.

The development of new points of entry and new career streams on the basis of qualifications, training and experience.

The conduct of a skills audit where necessary.

The development of new classifications, skills and definitions.

A thorough examination of the training needs to ensure that employees have an opportunity to continue to participate in skill formation and to ensure that they are trained to perform their existing and agreed range of tasks which employees will be required to perform.

And finally, appropriate wage rates.

If the process of restructuring is to be of maximum benefit to the State

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and its employees, extensive open consultation and exchange of information between all parties will need to be an integral part of the development of classification structures and career paths. To this end, the establishment of consultative committees will be necessary. Therefore we have proposed that an agreement will need to be reached early with the unions on a general approach and then for the detailed development to be done within agencies.

In response to specific issues of concern to the Government which were raised formerly with the trade union movement in a letter addressed to myself by the Minister for Industrial Relations, dated 20 September 1989, TTLC.4 incorporated the following matters as part of the proposal to restructure.

Proficiency allowances: we have indicated our willingness to examine the absorption of proficiency allowances into the appropriate award rate on the condition that the wage rate adequately reflects the skills obtained and the responsibility of the position.

We acknowledge that the Government is committed to implementing a new structure which adequately reflects the appropriate skills and should, therefore, obviate the need for proficiency allowances.

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MR LENNON:

Sick leave: consistent with the national wage decision Print H9100, we have acknowledged that the Government wishes to undertake a review of sick leave entitlements with the objective of ultimately establishing common entitlements and accrual across the State Service.

Shift work: we have agreed to review the operation and incidence of shift work having regard to efficiency and productivity, particularly in hospitals.

Spread of hours: we are willing to examine all requests for changes to the current spread of hours as per the second-tier arrangements. This will be done on the understanding that such requests fall within the agreed 7.00 a.m. to 7.00 p.m. spread.

Overtime: we are prepared to examine proposals put forward by the Government to compensate overtime with time off.

Aggregated wage rates: we agree to identify and examine areas where aggregate wage rates could be introduced.

Teachers: we will participate in a review of resources and their management. In this regard, the TTLC acknowledges that the Government will raise the issue of contact hours.

For our part, we want the issue of rationalisation of schools addressed concurrently with structural efficiency negotiations.

Permanent part-time work: we agree to review the incidence of permanent part-time work subject to there being no loss of full-time equivalents.

Overnight absence provisions: we have no objection to the Government conducting a review of these provisions, provided it is done in

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MR LENNON:

consultation. The results of the review, if deemed appropriate by the Government and unions, could form part of the discussions during the second stage of structural efficiency.

Uniforms: we agree to a review of the frequency of uniform issues and laundering and cleaning.

Special cases: as soon as practicable we will identify and advise the Government of all special or work-value cases to be considered in the context of structural efficiency reviews.

Translation: we agree that the translation of provisions from old awards to new must be expedient and with minimal disruption. It is therefore proposed that translation would occur as follows:

An agreed standard translation of current classifications to new classifications generally based on broadbanding of classifications will be developed.

The parties will seek to have the agreed standard translation form part of the decision of the Tasmanian Industrial Commission. As such, employees could be directly transferred without the need for advertisement of positions or consequent promotion appeals.

Employees who did not believe their position was appropriately catered for in the standard translation would have the opportunity to refer their case to a union management classification committee.

Where the committee agreed on an appropriate classification, this would be included in the translation process to be ratified by the Tasmanian Industrial Commission.

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MR LENNON:

The standard and agreed translations would be in the form of a schedule to relevant awards. Where the committee could not reach agreement, the position in question would translate in accordance with the standard translation.

The parties agree that the review of any individual positions shall be undertaken in a genuine manner.

Demarcation: we agree to work cooperatively towards the elimination of demarcation barriers where such barriers act as impediments to efficiency and/or productivity.

Service incremental payment scheme: we agree in principle that SIPS payments should be incorporated into award rates of pay.

Mr President, members of the Bench, further evidence as to our preparedness to cooperate positively to improve efficiency and productivity in the State Service has been the cooperation that we have given to the Government in the major reorganisation from 51 departments to 18 that is currently taking place.

Negotiations are well under way to effect the transfer of employees and positions under the new structure.

New processes and methods of operation are being introduced into all departments with the objective of improving productivity and efficiency. They are being introduced with our support.

We are firmly of the view that this reorganisation alone is sufficient to meet the requirements of the wage fixing principles.

In a letter to Mr Greg Vines, General Secretary of the TPSA, dated 16 July 1989, the Premier recognised that the reorganisation would:

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MR LENNON:

"... provide the mechanism to properly consider any decisions arising out of the National Wage Case on restructuring and efficiency".

The third point I want to address: the Government's contention that the Commission has not the ability to award an across-the-board increase with a common operative date.

The Government contended during their submissions that the Commission does not have the power to award an increase for State Service employees during these proceedings but they produce no factual evidence to back up this contention.

In fact, nowhere in its decision, Print H9100, does the Commission support the Government.

At page 8 of their decision they said, and I quote:

"We have decided that the first increase should be accessible from the date of this decision.

However, the actual date of operation for an award will be the date on which that award is varied following examination by the Commission of the proposals for restructuring and the giving of commitments."

Mr President, we have put a proposal for restructuring before the Bench for your consideration. If the Commission is satisfied that our proposals meet its requirements, then there is no barrier to awarding the first stage increase.

The federal decision, whilst encouraging agreement on restructuring proposals, does not demand it. In the absence of an

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MR LENNON:

agreement with the Government on restructuring proposals for the State Service, we have presented the Commission with a proposal which enables all of the outcomes envisaged by the National Wage Case of August 1989; that is, a modern award structure involving a reduction in the number of award classifications through broadbanding and multiskilling which will provide, on the one hand, an incentive for workers to participate in skill formation, and on the other, a broadening of the range of tasks which a worker may be required to perform.

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MR LENNON:

In addition our proposal provides for the creation of appropriate relativities between different categories of workers in the State Service. And finally, our proposal ensures that working patterns and arrangements can be altered to enhance flexibility and therefore the efficiency of the State Service.

At this point it is worthwhile reminding the Commission that our negotiations to date with the Government have broken down over the issue of negative cost-cutting items.

Our objection to approaching award restructuring in this manner is supported by the National Wage Case Bench itself. At page 11 of their decision, Print H9100, they themselves rejected such an approach. And I quote:

"Proposals for changes of this nature should not be approached in a negative cost-cutting manner and should, as far as possible, be introduced by agreement".

Further, in their February review, Print 8200, the Bench summed up very succinctly the approach that should be taken to restructuring. At page 2 of that decision they had this to say, and they were quoting in part from their August '88 decision:

"The Commission indicated that its purpose was to facilitate the type of review essential to ensure that existing award structures are relevant to modern competitive requirements of industry, and are in the best interests of management and workers. And it was not to be applied in a negative cost-cutting manner or to formalise illusory short-term benefits."

I want to turn now to the economic evidence tendered by Mr John Challen.

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MR LENNON:

Mr President, under questioning by Mr Willingham, Mr Challen presented a selective picture of the State's finances. He advised us that the Government was determined to reduce the level of the State debt to an acceptable level and that this strategy would take some years to complete.

However notwithstanding the state of Tasmania's finances, under questioning by myself, Mr Challen indicated that he believed the State had the capacity to pay the increases that it is envisaged would arise out of award restructuring.

He further indicated that the State had allocated up to \$26 million this financial year to meet the cost of wage increases likely to occur. Mr Challen estimated the size of the Public Service at 24,000 in number, each receiving on average approximately \$29,000 per annum.

If we assume for a minute that the Commission found in our favour, the cost of applying the first instalment across the board in the State Service from mid-October this year is between \$13 million and \$14.5 million for this financial year.

If the second instalment allowable under the decision was to flow from the minimal allowable time of 6 months after the first increase, then it would cost between 3.6 million and 4.1 million. Therefore the maximum that this decision would cost the Government this financial year is between \$16.6 million and \$18.6 million.

These figures represent the worst possible case scenario for the Government. They assume that the second instalment will apply across the board. We've never asked for that. They assume that no productivity will result and that the \$29,000 per annum figure for average salaries is accurate. Little wonder therefore that Mr Challen believed the Government had no argument on the incapacity to pay grounds.

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MR. LENNON:

I'll just explain briefly to the Commission how I arrived at those figures.

As I indicated, Mr Challen in his evidence indicated that the average salary for public servants is \$29,000 per annum (although I must say we find it very difficult to find an average number of people in the Public Service on that amount), and that the number of employees employed in the State Service is 24,000. Therefore if you multiply \$29,000 x 24,000 people x 3%, you come up with \$20.88 million per annum.

And if you remember, Mr President, yesterday Challen talked in round figures of \$21 million for 3%. If you take the mid-October date (that is, 36 weeks between now and the end of the financial year), you arrive very quickly at the result of 14.45 million for the first instalment. If you use mid-April as the date for operating the second instalment using the same formula, you come up with 4.01 million - a total cost of around \$18.46 million.

Another way of doing it is to estimate the number of people employed in the different categories proposed under our formula. I've assumed for the purposes of this exercise that 70% of the State Service would qualify for 3%, 20% for \$12.50 and 10% for \$10.00. Calculating it that way, the first instalment would equate to something around \$13.26 million and the second stage around about \$13.64 million.

So you come up with a variable figure, as I say, which is the worst case scenario for the Government. In view of the evidence tendered by Mr Challen yesterday, the Government has allocated up to \$26 million for wage increases this year. It's certainly well within its capacity to pay.

In any event, is it reasonable to argue productivity and efficiency in the

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Government sector on economic grounds alone? How do we measure productivity outcomes in the State Service? Is it by measuring the percentage of the wages bill as a proportion of Government expenditure, or is it by measuring the quality of service that the Government provides to the public in general?

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MR LENNON:

In reality, Mr President, the answer lies somewhere in between. In measuring productivity and efficiency improvements in the State Service we have to have regard to the demands placed on Government by the public for the delivery of services and then tune that to the Government's capacity to deliver and of course have regard for the Government's own policies.

We are committed to a more productive and efficient State Service as evidenced by our cooperation in the State Service reorganisation which has already commenced, and as evidenced by the proposals for restructure we have put forward in Exhibits 3 and 4.

Finally, Mr President, in making its decision the Commission, in the absence of any agreement between the Government and the TTLC, will need to decide which is the most appropriate way to apply the restructuring and efficiency principle to the State Service. Government can't have it both ways.

Yesterday it was, through its submissions, in my view, proposing an award-by-award approach. Today it backs away from that and somehow seeks to put back on the agenda the issue of conciliation by the Commission for, perhaps, an across-the-board approach.

We have already proposed an approach which enables an examination of the State Service as a whole. Is it through an award-by-award approach, or through an across-the-board approach, that we are most likely to achieve the outcomes desired; that is, an award structure which properly meets the demands of the public on the State Service, an award structure which is modern, which is inter-related, which contains appropriately fixed minimum rates which bear relationship to each other, which

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MR LENNON:

enhances the opportunity for employees, through skills formation, to progressively advance their careers.

Mr President, the TTLC is firmly of the view that it is only through the across-the-board approach to restructuring in the State Service that outcomes envisaged by the federal Bench can be achieved.

In closing I'd simply like to indicate to the Bench what I said on the first day of these hearings, and that is, so far as the union movement is concerned, the minimum wage outcomes that we expect from this system will be \$20, \$25, \$30 or 6%, whichever is appropriate for employees, and that we won't be involved in a negative cost-cutting exercise. And as far as possible we will prefer award restructuring to be done by agreement.

The final point I need to address is the matter raised by Mr Willingham via Exhibit W.5 where he directed the Bench's attention to the last paragraph.

Mr President, we would have hoped that we would have been able to reach an agreement with the Government to access the first instalment across the board. That has not been possible.

From our point of view, we sought to keep the discussions live after they broke down on 5 October and in fact I wrote to the Premier on 6 October, which is referred to by the Minister for Industrial Relations in his letter. And I indicated to the Premier in that correspondence that we would be prepared to meet over last weekend if they wished, and I indicated to him that it was with regret that we were unable to reach agreement.

We'd certainly gone into the

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MR LENNON:

negotiations in the hope that we would, but we believe that the issues that set us apart are fundamental in principle, and that is negative cost-cutting items. The document tendered by Mr Willingham today on behalf of his Minister has not moved one iota from the position. In fact, in some areas we believe it may have gone backwards from the position we believe we were in on 5 October and on the basis of the document that he's tendered today, we don't believe there's any useful purpose to be served by the Commission chairing a conference.

If the Commission has other ideas, well then that's for the Commission to decide. But certainly from our point of view, we believe that the issues have been sufficiently canvassed. We, for our part, at all times have tried to be open and frank, taken a consistent position. We've tendered all the evidence that we believed was relevant. But it's not until the horse has almost bolted, if you like, that we're in the shadows of the post, that the Government tries to call a 'no race' and to turn its back to where we were a fortnight ago and start all over again.

We would, for our point of view, say to the Commission that there is enough there in our proposal for restructuring to access the 3% across the board. The option to that is to do it award by award and we don't believe with a single employer that the outcomes which are desirable in the Federal Commission are achievable by that method.

Thank you, Mr President.

PRESIDENT:

Thank you, Mr Lennon. Mr Lennon, mindful of what fell from Doctor Garnham yesterday and earlier from Mr Buchanan, I take it that Mr Vines' earlier response was intended to cover that situation?

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MR LENNON: Yes. I took Doctor Garnham's submission yesterday to be almost a repeat of Mr Buchanan's.

PRESIDENT: Well, indeed, I think it was, bearing in mind that Mr Buchanan was either representing Doctor Garnham on that day as well as the University. I think he was. Perhaps he did no more than confirm what Mr Buchanan had said.

MR LENNON: Yes. Our attitude hasn't changed, Mr President. We still want them considered.

PRESIDENT: That's all I wanted on the record, for completeness sake only.

Thank you, Mr Lennon.

We'll reserve our decision.

That concludes this hearing.

HEARING CONCLUDED