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, 22 August 1988

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: I'll take appearances, thank you.

MR LENNON: If the Commission pleases, **LENNON P.A.** for the Tasmanian Trades and Labor Council and Tasmanian unions.

PRESIDENT: Thank you, Mr Lennon.

MR VINES: If the Commission pleases, **G.J. VINES** together with **MR J. GEURSEN** for The Tasmanian Public Service Association and also the Heads of Tasmanian Government Organisations Association.

PRESIDENT: Thank you, Mr Vines.

MR O'BRIEN: If the Commission pleases, I appear on behalf of The Federated Miscellaneous Workers Union.

PRESIDENT: Thank you, Mr O'Brien.

MR HOLDEN: I appear on behalf of The Hospitals Employees Federation, Tasmania No. 1 Branch ... No. 2 Branch, sorry.

PRESIDENT: Thank you, Mr Holden. I'm glad we sorted that out.

MR IMLACH: **PETER IMLACH** for The Hospital Employees Federation of Australia, Tasmania No. 1 Branch.

PRESIDENT: Thank you, Mr Imlach.

MR BAKER: **P. BAKER** from the Association of Draughting, Supervisory and Technical Employees.

PRESIDENT: Thank you, Mr Baker.

MR NIELSEN: **NIELSEN P.L.** for The Ambulance Employees' Association and the Bakery Employees' and Salesmens' Federation.

PRESIDENT: Thank you, Mr Nielsen.

MR MASTERS: **MR B.L. MASTERS** from the Tasmanian Prison Officers' Association.

PRESIDENT: Thank you, Mr Masters.

Yes, Mr Philp.

MR PHILP: If the Commission pleases, **GREG PHILP** for the Police Association of Tasmania.

PRESIDENT: Thank you.

MR ELLIOTT: **DAVID ELLIOTT** for The Secondary Colleges Staff Association.

PRESIDENT: Thank you, Mr Elliott.

MR ROWBOTTOM: If the Commission pleases, **ROWBOTTOM D.M.** for the Australian Hairdressers, Wigmakers and Hairworkers Employees' Federation and Shop Distributive and Allied Employees' Association.

PRESIDENT: Your name again?

MR ROWBOTTOM: Rowbottom D.M.

PRESIDENT: Thank you, Mr Rowbottom.

MR HANSCH: If the Commission pleases, **HANSCH B.J.** appearing for the Transport Workers' Union of Australia.

PRESIDENT: Thank you, Mr Hansch.

MR NICHOLS: If the Commission pleases, **NICHOLS R.P.** I appear for the Printing and Kindred Industries Union, Tasmanian Branch.

PRESIDENT: Thank you, Mr Nichols.

MR WILLIAMS: If the Commission pleases, **WILLIAMS L.C.** appearing for the United Sales Representatives and Commercial Travellers' Guild of Australia, Tasmanian Branch.

PRESIDENT: Thank you, Mr Williams.

MR DOWD: **DOWD M.J.** I appear on behalf of The Amalgamated Society of Carpenters and Joiners.

PRESIDENT: Thank you, Mr Dowd.

MR BEVILACQUA: **BEVILACQUA, PETER** - Tasmanian Catholic Education Employees' Association.

PRESIDENT: Thank you.

MR WILLIAMS: **GILL, JACK WILLIAM.** I appear on behalf of The Federated Furnishing Trade Society of Australasia, Tasmanian Branch.

PRESIDENT: Thank you.

MR SNARE: If the Commission pleases, **SNARE G.D.**, Federated Storemen and Packers Union of Australia, Tasmanian Branch.

PRESIDENT: Thank you, Mr Snare.

Anyone on the front row?

MR ABEY: I'll try this time.

If the Commission pleases, I appear for the Tasmanian Confederation of Industries, the Meat and Allied Trades' Federation of Australia, Australian Mines and Metals Association, Metal Industries Association of Tasmania and The Hop Producers' Association of Tasmania, **ABEY T.J.**, and with me appears **MR GLEN SMITH.**

PRESIDENT: Thank you, Mr Abey.

MR JARMAN: If the Commission pleases, **JARMAN M.** I appear on behalf of the Minister for Public Administration, President of the Legislative Council, Speaker of the House of Assembly, Commissioner for Police, Chairman of the Southern Regional Cemetery Trust, Chairman of the North-West Regional Water Authority, Governor of Tasmania, Tasmanian Development Authority and the Chairman of the Port Arthur Historic Site Management Authority.

PRESIDENT: Thank you, Mr Jarman.

MR WILLINGHAM: If the Commission pleases, **CLIVE WILLINGHAM.** I appear for the Minister for Industrial Relations, pursuant to section 27 of the Act.

PRESIDENT: Thank you, Mr Willingham.

MR GARNHAM: If the Commission pleases, for the Tasmanian Council of Advanced Education, **JIM GARNHAM.**

PRESIDENT: Thank you, Mr Garnham.

MR HARGRAVE: If the Commission pleases. I appear on behalf of The Printing and Allied Trades Employers' Federation of Australia, **HARGRAVE J.**

PRESIDENT: Thank you, Mr Hargrave.

MR RICE: If the Commission pleases, **RICE K.J.,** I appear on behalf of TFGA Industrial Association.

PRESIDENT: Thank you, Mr Rice.

MR BLACKBURN: If the Commission pleases, **BLACKBURN J.G.** I appear on behalf of The Retail Traders Association.

PRESIDENT: Thank you, Mr Blackburn.

Now, Mr Lennon.

MR LENNON: Has the full team been announced, Mr President?

Before commencing, Mr President, I'd like to present an initial exhibit to the Commission which shall be the claim, for all intents and purposes, that we'll be pursuing today.

PRESIDENT: We shall mark this TTLC.1.

MR LENNON: I can indicate from the outset, Mr President, that the Tasmanian Trades and Labor Council, on behalf of Tasmanian employees, will be pursuing the following this morning.

A 3% wage increase operative from 1 September 1988 to apply to all awards and agreements of the Commission.

A further $10.00 across-the-board adjustment to apply to all awards and agreements of the Commission, operative from 1 March 1989.

All wage-related allowances to

MR LENNON: receive a 3% increase operative from 1 September 1988 and that the minimum wage should be adjusted as follows.

A 3% operative from 1 September 1988 and a $10.00 amount flat adjustment to be operative from 1 March 1989.

With respect to the last matter, we had some discussions with the Tasmanian Confederation of Industries last week, Mr President, and they have indicated their support for the movement in the minimum wage, as I've just indicated.

MR LENNON: Further to that, Mr President, if I could just quickly take the Commission through the document, duly titled `TTLC.1', to indicate from the outset, I guess, the changes that we seek from the decision of the Australian Conciliation and Arbitration Commission, Print H4000.

First of all, in wage adjustments there's an alteration to (a), where we seek, as I've already indicated, the increase operative from 1 September for the 3% and the $10.00 from 1 March 1989.

Secondly, we have deleted wage adjustment (d) of the ... and therefore they're renumbered in our document. But wage adjustment (d) of the ACAC has been deleted.

That's that principle which said:

> "The dates of operation: the first increase agreed by the parties will be the day the agreement is approved by the Commission".

That's been deleted now from the document.

Secondly, and therefore (d) in our document would now read:

> "Where increases in individual awards are arbitrated the Commission may grant retrospectivity".

I'm sure the Full Bench would be aware that the Australian Commission in its decision determined not to grant retrospectivity. We are suggesting and putting forward to the Commission that you should allow yourself the discretion to grant retrospectivity where you believe it proper to do so.

Next change in the document occurs under the superannuation principle, point (a), the Australian Commission

MR LENNON: said, `... pursuant to section 28 of the Act ...'. We have deleted that and put in its place, `... pursuant to the relevant sections of the Act ...'.

As the Commission would be aware, section 28 of our Act has little to do with superannuation, whereas there's a lot to do with it in the ACAC. So we're simply trying to tailor the principles to this Commission.

On conditions of employment, which is at page 6 of our document and, for reference for the Full Bench, page 14 of the National Wage Case decision, we have deleted all the words after `flow on' in the fourth line of the ACAC decision. The words we have deleted are `... and must be processed in National Wage Case proceedings or before specially constituted Full Benches'.

And I can indicate, Mr President, that I ... again, discussions were held with the Tasmanian Confederation of Industries last week, and they support that alteration to the principle.

The Government were less forthright, although Mr Willingham has indicated that some position will be put this morning from the Government on that position.

The next change occurs in anomalies and inequities at page 8 of our document, `Procedure (i)'. That is a change in the national decision. They say, `... brought to the Anomalies Conference by the peak councils, namely, the ACTU and ACPA or by any union not affiliated with those bodies'.

We have altered that to reflect the current position with anomalies and inequities, which indicates that it will be brought to the Commission by the peak council; namely, the TTLC.

MR LENNON: That's a procedure which is already in place.

And on page 9, again with the procedures, at the top there, number (2), in the ACAC decision an arguable case would go to a Full Bench of the Commission for consideration. We've altered that so that it could go to a single commissioner or a Full Bench for consideration. So that the discretion would be there in keeping with the current position.

And we've deleted point (4) which says that, notwithstanding the whole principle, nothing shall apply, basically. And we've deleted that.

And again, Mr President, I can indicate that that deletion, or those two changes, come with the full support of the Tasmanian Confederation of Industries; that is, to allow the discretion of the single commissioner or a Full Bench to hear an anomaly or an inequity in the case where an arguable case is found.

And secondly, that the status quo, if you like, should be retained for anomalies and inequities; that is, the cases would continue to be able to be hard under that principle.

So they're the changes that we seek, Mr President, from the national decision.

If I could deal first of all ... sorry, Mr Abey's found another change.

Page 6, I beg your pardon, for consistency, we have also altered the principle regard ... another change on superannuation. I apologise to the Commission. We weren't seeking to sneak this through.

Point (d) at page 6. The ACAC indicated that they would not grant retrospective operation for any matters determined in accordance with

MR LENNON: this principle. We have altered that to say that:

> "The Commission may grant retrospectivity for any matters determined in accordance with this principle, provided that in the case of arbitration, the date of operation shall not be prior to 1 September 1988".

DEPUTY PRESIDENT: Was that an agreed matter?

MR LENNON: No. We hope it will be after your decision, but at the moment it isn't.

And that is completely consistent with the change that we're seeking at wage adjustment, point (d), for us.

MR LENNON: Our intention is to allow the Commission the discretion to grant retrospectivity where it believes it is just and fair to so do, and we'll come to the question of the change that we seek in the superannuation principle shortly, Mr President.

To deal with wages first. The Commission would be aware, of course, that the TTLC claim departs markedly from the decision of the ACAC in that we are seeking across-the-board movement of 3% from 1 September 1988, whereas in its decision the ACAC said increases would be allowance from 1 September 1988, but the question of date of operation would be done on an award-by-award process.

Well, that decision was tailored for the operation of the ACAC and we believe it should not necessarily be followed by this Commission.

First of all, in its decision, the ACAC indicated that provided unions were prepared to give a commitment to review the structure of awards in accordance with the structural efficiency principle, that that, of itself, would entitle people to the 3% increase.

Nowhere in its decision did the ACAC say that the support should also be forthcoming from employers. The onus is clearly on the unions.

At a meeting of unions held on 17 August, Mr President, the following resolution was carried, and I'd like to tender this up to the Commission.

PRESIDENT: TTLC.2.

MR LENNON: As you can see, Mr President, the motion carried at the TTLC meeting wasn't a meeting of the Trades and Labor Council. It was a meeting of the unions convened to consider our position with respect to the National Wage Case. It was a well-attended meeting.

MR LENNON: The relevant part of the resolution is in (a) where the meeting indicated a broad acceptance to give a commitment to review State awards, to give effect to the structural efficiency principle.

Since that time, our office has been contacting unions individually to see if we could get an indication, particularly from those who weren't at the meeting. No union has indicated to us at this stage, Mr President, their unpreparedness to cooperate with that part of the principles which seeks the support from the union movement to review awards.

We take the meaning of the ACAC decision to mean this: that provided unions are prepared to give a commitment to review awards, the detail of how those awards are to be reviewed will be something that will be done in cooperation with the Commission and it will be monitored by the Commission.

The employers, I believe, certainly from the discussions that we've had with them last week take a different view to that. They are saying that they want to know the detail of how awards are to be restructured before 3% will be available.

That's an unreasonable position to take, in our submission, particularly given, for private sector awards, all the discussions are going to have to be had primarily with the Tasmanian Confederation of Industries, which will create a bottleneck.

If unions are prepared to give the commitment to the satisfaction of the Commission, then we believe the 3% increase should be available to them. To do anything less would not be to carry the principle of

MR LENNON: uniformity and consistency across-the-board. It will mean, if this Commission adopts the national decision, that even though unions would have given the commitment on the same date, either to this Commission or to the TCI, that the increases applying to their members will vary considerably on the basis of who gets the application in here first, not on the basis of fairness, equity or good conscience.

So, we'd indicate right from the start, provided that we are prepared to give the commitment (and there's no indication that we aren't) to the satisfaction of this Commission, in two parts: 1) not to seek increases inconsistent with the principles that this Commission adopts; and 2) to be prepared to review the structure of the awards which would be monitored by this Commission, then the 3% should be available immediately to us.

PRESIDENT: Could that mean, Mr Lennon, that where a Federal and State award operates in tandem with the State award really being a kind of sweeper award, picking up those employers who are not covered by the Federal award, the State award could be varied before the Federal?

MR LENNON: That's true, Mr President, and clearly, under this decision, if this Commission were to adopt the principles of the ACAC, you would not have the discretion necessarily to grant the operative date for the 3% in the State award the same date it's granted in the Federal award. I mean, that's the way this decision reads.

DEPUTY PRESIDENT: Could it mean that some Federal awards which are counterpart awards to State awards, on the other hand, could move before the State award, in effect?

MR LENNON: Well, no Federal award could move before the State award, if you accept

MR LENNON: our submission because the earliest a State award can move under the ACAC decision is 1 September. We're saying that all awards and agreements of this Commission should move at 1 September, provided the unions who are parties to those awards are prepared to give the commitment: 1) not to pursue claims inconsistent with the principles; and 2) to agree to review the structure of the award in accordance with the structure and efficiency principle.

Now, if that is the case, we say there's no barrier that can be placed before the unions or the employees covered by those awards to get the 3% now.

If I could give you a scenario, Mr President. We would suggest that this could well happen and this has been our experience in the 4%. The unions lodge a claim with the employers through the Tasmanian Confederation of Industries, who operate for the overwhelming majority of employers covered by the awards of this Commission.

The first response we'll get from them is, we've got to go and get instructions from our members. We could see that taking 4 or 6 days and bearing mind they'll have 50 or 60 claims in front of them and they'll often get individual instructions, because they see the review of particular awards perhaps being different from one to another, as we too would.

MR LENNON: Then a negotiation process takes place. And if we ask for the increase from 1 September, and we reach agreement on the way the award should be structured, and they offer an increase 1 January next year, we don't accept that. So a whole list of cases come before this Commission for arbitration.

The way the principles read at the moment, the earliest date that you can grant the increase for those awards is the date that you arbitrate them, because there's no agreement. Even if there is agreement and we agree to, say, 1 September, the way the principles are written at the moment you can't grant 1 September as the operative date: 1) because it is unlikely this decision will be down before 1 September, therefore no dates for hearing are available before 1 September; and 2) if you pick up word for word the decision of the ACAC, the earliest date you could hand down the increase would be the date of your decision, as I read it.

And I refer you to currently in the ACAC decision, wage adjustment (d). It says:

> "The date of operation of the first increase agreed by the parties will be the day the agreement is approved by the Commission".

Now that reads, I believe, that therefore (d) is another way of writing (e), frankly. It doesn't make any sense at all to me.

And we simply believe that the capacity for the employer organisation in this State to act fairly and equally, uniformly and consistently, for all employees in this State, isn't available to us, not because they mightn't want it to, but because they simply haven't got

MR LENNON: the capacity to have the discussions at a pace which would enable uniformity and consistency of treatment.

We believe that the detail of the way in which awards should be restructured is something which the ACAC itself envisaged would be done largely by the Commission, because they were keen to ensure that the structural changes in one award didn't impinge upon structural changes that may be necessary in another award where there is a cross-over or where one award affected the operations of another award. For example, the Wholesale Trades Award and the Retail Trades Award are linked quite inextricably, as are a number of awards of this Commission.

Clerks, for example, are covered right across the State with the retail award being the main award, but a number of other awards occupying clerk classifications as well. I believe that the ACAC, in its decision, was keen to ensure that the structural change which took place in one award was, within a concept, a structural change that the Commission saw for all awards.

And therefore I believe a close reading of their decision would have seen an intent from them to ensure that they properly control the structural changes in awards, and therefore they didn't see the detail being worked out outside the Commission, but rather within the Commission.

PRESIDENT: Mr Lennon, if I've understood you correctly, are you saying then that the 3%, and presumably the $10.00 that could apply later, is given in exchange for a commitment to agree to consult on the structure of an award?

Let me give you an example. The Apprentice-at-Law Award contains one classification only. How could you restructure that?

MR LENNON: That's why we're going to ask you to monitor the restructure, Mr President.

PRESIDENT: But they would still get 3% ...

MR LENNON: Yes.

PRESIDENT: ... plus $10.00.

MR LENNON: Yes. I mean the decision of the ACAC is clear: `Any union seeking to vary a specific award to give effect to the increases allowable is required formally to agree that it will cooperate in a review'.

Now never anywhere in their decision has the Commission ever said that there will be an outcome from the review. But they have said it is necessary to conduct a review.

Now we believe that in the overwhelming number of awards in this State, a structural change will take place. In a number of awards of this Commission it is already taking place.

EZ is a classic example where a huge amount of work has been done out there looking at the way in which the award should most appropriately be structured. Clearly, there may well be awards of this Commission where, after having the review, it is agreed between the parties that no structural change is necessary.

Should those employees be denied the right to the 3% increase? They are prepared to have the review. The outcome of the review is something which this decision ... and we don't resile from that, but from the outcome ... which is seen as something happening through the National Wage Case proceedings being reconvened or a specially constituted Full Bench. That's as I see it.

PRESIDENT: So that if any review that is satisfactory to both parties or all

PRESIDENT: parties results in a structure that may require something extra by way of payment, then that's a matter that comes to the Full Bench. In other words, the 3% doesn't cover the review at all necessarily.

MR LENNON: No.

PRESIDENT: That's compensation for agreeing to the review.

MR LENNON: Yes.

PRESIDENT: And to abide by the principles.

MR LENNON: Yes. As I said, we see the commitment being given in two parts. So did the Commission itself, the ACAC.

First of all, give an undertaking to abide by the principles and not to undertake claims inconsistent with the principles, and secondly, to agree to formally cooperate in a review of awards via the structure and efficiency principle.

PRESIDENT: Did something go wrong in New South Wales, Mr Lennon, in that regard?

MR LENNON: Are you talking about the last election?

PRESIDENT: Well, it's all a point of view, I suppose. I was referring to the front page of yesterday's paper, I think, that something like a million workers felt that they were being denied the 3% because of an interpretation being put on the decision.

MR LENNON: ... be here for this Commission to tailor this decision to suit the needs of Tasmania.

I guess a lot of criticism has been handed to the two-tier system in the last 6 months. Some of it ... well, it has been directed in all directions, I think, at various times.

What we are attempting to come to grips with here is the new system; an opportunity for all of us to weed out the problems of the last one.

We can't expect, I don't think, employees in Tasmania to continue to commit themselves to a system which provides no outcome.

We are saying that we, the union movement, are prepared to cooperate in a review. We don't really know ... we can't anticipate or predict now where that review will take us, but we are prepared to cooperate genuinely in the review.

We believe it should be monitored by the Commission. But if we are to wait until the review is completed before we get the 3%, we won't have a system, because we won't give the commitment, and nor should we be expected to.

We've been very patient. We've just recently done a survey of the penetration of the 4% second tier into the awards of this Commission. Whilst it has been very good at the public sector level, it has been very poor in the private sector, with just 27 out of the 74 awards of this Commission been completed for the second tier.

Now we are not prepared to continue with that sort of backlog. You can see now why we are concerned with having to go through the negotiation process again with the TCI.

We accept that they are overburdened

MR LENNON: with work, having to deal with 60 or 70-odd unions all clamouring at their door wanting to get their claims up and running. But we will not, nor should we be expected to, give our commitment to a system that is going to create another backlog like the second tier did.

Some aspects of those large number of awards which are completed are minor, some are major. But nevertheless, it gives an indication of the time lag that we are going to have to put up with if we are forced to go off to the TCI and get agreement on every single award, or seek to get agreement on every single award, before we can bring it to this Commission.

We say, if we are prepared collectively to give the commitment, then no barrier should be put in front of us to get the 3% now, and then we can go off and have the review of the structure of the awards within the right atmosphere, and not having regard with trying to get a false or speedy conclusion so that we can rush up here for the 3%.

DEPUTY PRESIDENT: Mr Lennon, are you suggesting to us that the TTLC Exhibit No. 2 should be accepted as indicative of all unions accepting the commitment, or do you think it should perhaps be followed up by a letter from every union so that it can be part of the Commission's record?

MR LENNON: We have accepted in our document, Mr Deputy President, TTLC.1, that we would be required to give the commitment formally, as we sought no change to wage adjustment point (c).

What we were trying to give the Commission was an early indication of the likelihood of acceptance of unions to give the commitment to review the structure of awards.

MR LENNON: That was a formal motion that was carried at the meeting, after a long discussion. It shouldn't be taken to reflect that all unions in Tasmania, because of that decision, have hereby given their commitment to review the structure of awards.

What it should indicate to the Commission is that there is a general acceptance that that will need to be done, and a general willingness to do that, because we were instructed after that meeting to go off and have discussions with the employers on the 3%, subject to the fact that we would be prepared to give the commitment to review the structure of awards. Different unions have to go through different processes.

In the past, this Commission has reconvened the national wage bench to get the commitment from unions not to pursue claims inconsistent with the principles, and so on.

This time we would probably see that commitment in two parts, having an (a) and a (b), if you like.

PRESIDENT: If the 3% is given in exchange for union agreement to submit (if that's the right word) their particular award to some kind of review, is it likely that the union would then take the initiative to ensure that that was carried out, Mr Lennon, if the restructuring was unlikely to produce any joy for the union?

MR LENNON: I wouldn't think that the unions would not proceed to do it. I mean, where the restructuring of awards is taking place, in the main it is being done at the initiative of the unions after all. We invented it, I think, invented the .... when it comes to this.

If you look at the national negotiations that have taken place in the last 6 to 8 months, it has been the union movement which has gone to

MR LENNON: the employers, in the metal industry, and right across a range of industries, to seek to institute this new process.

If we are going to have productivity and efficiency changes, we believe that they should be real, and therefore the best way to do that is to properly restructure awards and make them relevant to the way in which the economy is moving now.

Most awards were set up pre-War, and really don't take account of the changes in technology that have taken place since.

I would see most definitely the union movement taking a proper role in the restructuring of awards.

But in the first instance, I believe that to get the thing off the ground properly it should be the role of the Commission perhaps to convene the award in the first instance, to put it into a conference, and the Commission use its auspices to ensure that the program for restructure is put on the right frame from the outset.

PRESIDENT: Have you any ideas of your own as to what was meant by `restructuring', Mr Lennon?

MR LENNON: Well it's a new buzz word, Mr President. Australia has been reconstructed by an overseas delegation of the union movement, and it is probably going to be restructured tomorrow night with increased taxes. And then we'll get a further restructure when the State Government does its bit.

But, I mean, therein lies the problem. It means different things to different people. It means different things to us, I am sure, as it does to the employers, and therein lies our dilemma, being asked to give a commitment to something we don't

MR LENNON: know when it will come about.

MR LENNON: The unions are simply, in this State, not prepared to give a commitment to get a 3% wage by some day down the track, when we are prepared now to give a commitment to review the awards. And where that review leads us will depend not just on our bona fides, but on the employers' as well and the way in which the Commission is able to bring the competing aims of the two parties together.

Now, if all that process has got to go ahead before we get the 3% (Tim just nods and says, 'Yes'), well we don't want to be in that.

That's not a centralised system at all which provides uniformity and consistency of treatment for all workers in this State.

If we're prepared to review the awards, let's get on and review them. We're entitled to the increase now.

If the employers really don't want to review the awards, but want to use this as an exercise to delay the increase to their employees, which they are capable of doing .... some considerable time, if we have to go through this process, then we don't want to be in that either.

PRESIDENT: What about agreements that may reflect some mutually acceptable 'restructuring'? Would they also be included?

MR LENNON: Well, we would see them getting the 3% now, yes. And then again, it's a question of sitting down between the employers and the unions party to those agreements - a process which would be monitored by this Commission - to see what is and is not relevant in terms of restructuring and efficiency for that agreement.

I mean, we don't know what tomorrow holds for restructuring and

MR LENNON: efficiency, but what we do know is that we probably won't have it unless we can get the 3% now.

That's, in effect, it in a nutshell, I think. We've not going to go through the 4% second-tier process again. We've demonstrated to the Commission earlier on today the delays that have occurred in that area, particularly in the private sector where the low income earners are.

And it's simply unreasonable to ask employees who have carried the burden of restraint in the last 4 or 5 years (which I'll the show Commission shortly) in terms of CPI versus wage rises since ... in the last 4 or 5 years.

And what we're really asking them to do is to suffer no increase again for a period of anything up to 12 months, whilst we wait in the line for the TCI to get round to us in terms of having this discussion.

In the main, we won't be able to agree on the operative date, so therefore, we'll all be coming here for arbitration and then we get a backlog in the Commission.

And we all know, that here today on 22 August, we are prepared to indicate to the Commission now our preparedness to cooperate with a review and the structure of awards.

So now I think the onus is on the employers to show us where else it was foresaw a delay in the 3% increase, other than a preparedness to give a commitment to review the structure of awards, which we are prepared to do now.

COMMISSIONER WATLING: Mr Lennon, in the national decision it reflects on a number of things. But when talking about this issue it

COMMISSIONER WATLING: says:

> "Essentially, this is a fundamental review of existing award structures".

`Award structures' - what do you perceive `award structures' to be? Wage rates, scales etc. or conditions or both?

MR LENNON: Well, in some cases it could be both. In the main, it's probably the wage rate structure of the award - how relevant that is.

I mean, for example, we've been great supporters in the union movement of improving the skill base of our work force. Now a lot of the award restructuring is taking place is looking at the structure of the work force in a skill component manner.

The move in the motor industry is for a super tradesman to take account of mechanical and electronics, with a great move of the motor vehicles into the electronic age.

At EZ they're looking at removing a number of classifications in the award. In the metal industry, nationally, the same process is being undertaken.

We want to see awards provide an incentive. You know, this is in a general term, but particularly in the trades areas, an incentive for improving your skill, rather than trying to produce productivity and efficiency improvements by rigidly enforcing the 10-minute tea-break.

There are better ways of improving efficiency and productivity. And the best way of doing it is to improve the skill through better education and training programs and reflecting a desire of the employer to improve the employee's skill and an incentive for the employee to improve his or

MR LENNON: her skill by having a relevant award structure.

And it's particularly so for the manufacturing industry. But I wouldn't necessarily see it applying in that way in the retail award, for example.

Although I would see the introduction of a proper career structure .... in the retail award as being somewhat relevant to that industry. I mean, it is an industry that used to have a career. It used to be recognised, not always in the award, but certainly by the employer, that there were different skill levels that could be obtained by retail employees.

At the moment they tend to pay a loose form of commission. It certainly seems to me that there is a lot of scope in Tasmania's awards for a restructuring. In some cases it will only relate to the wage rates. In other cases it will relate to the wage rates and the conditions.

It's not something that can be done overnight. Even the broad basis of it probably isn't something that can be done overnight.

But certainly if we are going to be asked not to have the 3% available to us till such time as that is done in each award of the Commission - and I've indicated at the start that most of that's going to have to be done through the TCI - we're not going to be in it, because it's not going to provide us a wage outcome which in any way would meet the minimum expectations of our members out in the field.

MR LENNON: Most of those have suffered greatly in the last 4 or 5 years as a result of us continuing to commit them to a centralised wage fixation system.

We've suffered the burden of restraint. We've abided by the spirit and intent of the principles over the last 4 or 5 years.

Now what capacity of this State industrially to commit ourselves to the rule of thumb of the ACAC decision doesn't exist, I don't think ...

As I say, unless we can get an outcome from this Commission which is reasonable, which is equitable, which is uniform and consistent across-the-board, then we don't believe that you will provide us the essential ingredients for the maintenance of an orderly wages system. That's what we're asking you to do today.

I don't think our claim is unreasonable. We're asking for this Commission to provide us with the ingredients which we see as being essential for the maintenance of an orderly wages system. And that is, an across-the-board increase of 3% to all awards and agreements of this Commission, subject only to us being prepared to give the commitment to review the awards and agreements of this Commission in accordance with the structural efficiency principle.

And secondly, to give an undertaking not to pursue any extra claims, award or over-award, except in compliance with the principles.

It's not an unreasonable position for us to take.

A centralised wage fixation system has proven over time to be beneficial. We would never say that it's been perfect, but it has been beneficial. It has generally

MR LENNON: facilitated a smooth functioning of a prices and incomes approach developed through the accord.

We want to remain committed to it, but we would be unable, I think, to give the commitment unless we can get some form of general increase.

It has provided ... the centralised wage fixation system has unpinned, indeed, economic recovery and restructuring. It can continue to do that.

It is our strong submission, Mr President, that a continuation of a positive and constructive role would indisputably be in the public interest. And that can best be achieved on this occasion by acceding to our claims.

The cost of the increase is affordable. I haven't heard any employer organisation in this State since the decision came down complain about the amounts contained within the decision.

In fact the catchcry of employers has been, `We're prepared to work within it. We mightn't like it, but we're prepared to work within it.' Indeed, the Government ... how could we forget the Government ...

PRESIDENT: Which system are we referring to now?

MR LENNON: I'll let the Government speak for themselves, Mr President.

But I think it is worth recounting exactly what this Government has said in the lead up to this decision, `Gray Backs Wage Push'.

PRESIDENT: TTLC.3.

MR LENNON: I refer you to the third paragraph on the first page. This is an article from `The Mercury', from 6 July, and the Premier:

MR LENNON:

> "So understandably they [meaning the employees, I take it] are feeling the pinch. That's why we won't increase taxes and charges on individuals, because they're suffering enough. I understand what the unions are talking about and I have a degree of sympathy with them."

And of course it is history now, and I'll come to that in a minute, that Tasmania went to the National Wage Case arguing for a 6% wage increase across-the-board.

`The Australian', 6 July, where Ewin Hannan paraphrased the Tasmanian Government in this way; he said:

> "The Tasmanian Government told the wage case it supported an overall increase of 6% to be paid in two 3% instalments from November this year and June 1989".

We don't support the operative dates, but certainly what I am getting across is the Tasmanian Government supports the principle of an across-the-board increase.

And, again, in `The Examiner', I refer you to the fifth paragraph quoting the Premier. He says:

> "`We're supporting 6% over the coming financial year, but there has to be some variation in the dates when these increases would be granted from', Mr Gray said".

So clearly the Government is supporting us in terms of our approach for an across-the-board increase.

Mr President, indeed in their submission, if I can just refer you

MR LENNON: to the relevant page of their submission to the National Wage Bench. At page 1200 ...

PRESIDENT: TTLC.4.

MR LENNON: At page 1230 of the transcript, at the top of the page ... I think this was Mr Jarman in fact, and he's promised to quote the whole submission of the Government if I refer to this.

Those of you that are looking for an afternoon siesta, you'll know when to have it.

It says:

> "Our preferred position, if the Commission is persuaded to adopt a principle which permits wage adjustments in economic terms, is for wage increases amounting to 6% over the life of the package; we submit that the first instalment of 3% available from November 1 this year. The Commission could then, at a convenient time, consider a further increase not exceeding 3% payable from a date earlier than 1 June 1989."

So clearly, the Government, in its submission to the Full Bench, was supporting an across-the-board increase, not an increase which would start to commence from a date, but an across-the-board increase they say operative from 1 November. We are seeking the increase operative from 1 September of this year.

PRESIDENT: Of course they also suggested that any such increase should be totally offset.

MR LENNON: Well, that's not consistent with what he said in 'The Mercury' of 6 July, Mr President.

PRESIDENT: Perhaps he was misquoted.

MR LENNON: The Premier is never misquoted when he is talking about increases for employees at 6%.

We sought the clarification in that and got it to our satisfaction.

And come just briefly, Mr President, to the 4% second tier. In its decision the ACAC indicated that it may be appropriate to delay the introduction of the 4% second tier until after this package has been concluded.

And there again underlies another problem for us in giving a commitment to this new system unless we can get some guarantees of operative dates.

We're talking about only 27 of the 74 State awards in this State having been concluded for the 4%. If we are to say that the 4% is not going to be available to those employees in Tasmania who have not yet received it until after the 3% and the $10 is concluded, we're talking about employees in this State - in the main, low income employees - not receiving an increase for anything up to 2-year period.

And we're supposed to give a commitment not to pursue claims for those employees. And certainly we would be requesting that this Commission deal with outstanding 4% second-tier matters on their merits. If an employer believes that the

MR LENNON: increases for the 4% where it hasn't applied yet, and the 3% plus the $10, are such that they can't afford them, it is open to them to run an argument before this Commission in accordance with economic incapacity to pay principle; the principle, we note, that has had very little use in this Commission.

We don't like that principle, in fact, but we'll suffer it on the understanding that employers who wish to delay the 4% second-tier increase (where it hasn't yet applied) until after the 3% and the $10 (one or both of those increases) has been put in place should, before the Commission is prepared to accede to that request, substantiate an argument on economic incapacity to pay.

In our submission, it would be inequitable to deny the limited proportion of the work force access to the second tier on the basis of some arbitrary cut-off point which it seems that the Commission is trying to introduce.

Not necessarily ... well, a cut-off point which would commence from 1 September and remain in place until probably some time after the $10 has been put into the pay packets of those employees who haven't yet got the 4%.

Now we don't see that as being an appropriate mechanism for this Commission to undertake. I would suggest that the penetration of the 4% into the awards of the ACAC as being far higher across-the-board than what it necessarily has been here.

PRESIDENT: I was wondering, Mr Lennon, on your own figures of 27 out of 74 private industry awards only having been varied, of the remaining 47, in respect of which a commitment would

PRESIDENT: be given to a restructuring along with those that have been granted the 4%, should that restructuring result in some sort of outcome, I imagine those for whom you appear would then be seeking at least 4%.

MR LENNON: Well, Mr President, it's not necessarily envisaged in the structural efficiency principle of this new system we're now talking about, will indeed result in offsets.

What we're talking about is properly restructuring awards, not playing around the edges, as with the 4% second tier. And the Commission made that observation itself. And it was somewhat suspicious, in some cases, of the way in which the second tier operated. And we were very suspicious. I mean to get the 4% in most cases, we've agreed to things like EFT (electronic funds transfers), extending the spread of hours, and all those sorts of things.

What's envisaged within the structural efficiency principle this time round is something far greater than that I think - talking about a proper restructure of the award, to properly take account of the needs of employees and employers within that award.

It's not all one-sided, I don't believe. I'm not simply looking at restructuring awards to suit employers alone. We're looking at restructuring awards to meet the needs of both employers and employees.

Now the second tier was an exercise to meet the requirements of the employers. That's all. We were asked to give up things to get 4%. Now I don't think it's envisaged within the structural efficiency principle to go through that process again - talking about a more deep-

MR LENNON: rooted examination of the structure of awards than was ever undertaken under the 4% second tier. In the overwhelming number of cases, the only case I can recall where it was sought to do something more than that was at EZ - and that's continuing at the moment - where a 4% was granted across-the-board, and then a total examination of the award took place after that.

But even in that case, the 4% ... there were some traditional offsets, then they moved forward from there into the process that is envisaged now.

MR LENNON: So for those in those awards, those 47 awards where the 4% hasn't yet concluded (in some cases it's only minor aspects) shouldn't be taken to mean that in all of those 47 awards none of the employees under those particular awards have received the 4%, because in a number of cases all but a few have. In other cases ... they may be awards which at the moment don't have application - Carbide for example. It hasn't received the 4%, but all of the employees under the award have got the increase.

In other words, there's no-one under the award at the moment, but it may be relevant into the future. But there are other awards of this ... for example, the Furnishing Trades Award is a classic example where only 2 days ago I received a telex from the Tasmanian Confederation of Industries supporting the proposition which is likely ... it hasn't been finally determined yet, but it's likely to be supported by the employees.

Now it may well be that that increase is denied under this, yet the employers are supporting it. What are they going to do tomorrow: turn around and not support it? This is a ludicrous situation that we could be involved in with the 4%, 3% and $10.

The options available to the furnishing trades employees are numerous now, and yet only 2 or 3 days ago we had unanimous support after this decision was handed down for the 4% increase to apply from the employers' side to people in the furnishing industry covered by the State award. And yet what we could find ourselves involved in now is an about-face from the employers either to get some support from this Commission not to grant the 4% until after the 3% and $10 is completed, or to delay the 3% and the $10.

Now what we should be talking about

MR LENNON: is the amount of increase that employers have suffered over a period of time, or have had to pay over a period of time.

Now if we're going to give a commitment to this system we want to know up front exactly what we're giving the commitment to, and we are saying that this Commission should have the discretion to stop the 4% only where it's satisfied the employer has made a case under the economic incapacity to pay principle.

It's been there for employers to use for some considerable time. The fact that they've decided not to use it is up to them. That's a problem they have to face. But it is there, it's available and it's the mechanism by which an employer can come and put argument before this Commission as to why an increase shouldn't apply. And the only ground that they've got to be exempted from an increase from a period of time is on the grounds of economic incapacity, and they would have to put a strong case before this Commission before that would be granted. So other than those circumstances, we would say that the Commission should continue to award 4% increases as they arrive here and as they're requested, and that the granting of the 3% from 1 September and the $10 from 1 March should not of itself deny those employees who have not yet received the 4% the opportunity from getting it.

PRESIDENT: Do you think it likely, Mr Lennon, that any award could be restructured without there being a consequential claim for a further adjustment on account of that restructuring?

MR LENNON: I wouldn't like to give the prediction, Mr President, although I think it unlikely. But, I mean, I think it unlikely the awards would be restructured in any major way without there being a claim for an increase. That claim, no doubt,

MR LENNON: would be heard on its merits at the time. I certainly wouldn't want to foreshadow in any way one way or the other in respect of that. That would depend on the result of the restructuring. The ACA, sir, I think has envisaged increases becoming available, otherwise I find it difficult to understand why they've included wage adjustment point (f) in their decision.

PRESIDENT: But they did nominate National Wage Benches or special Full Benches to deal with them having regard for the number of Federal awards. It's unlikely, I would have thought, that the National Wage Full Bench or a special Full Bench would want to be dealing with literally hundreds of awards.

MR LENNON: Well they may well alter their thinking in February next year when they propose, I think, to reconvene to examine progress at those discussions on restructuring. And I think further, they've envisaged that it's unlikely that they would be seeing too much movement in accordance with the structural efficiency principle before July of next year.

I read their decision as being they're not talking about Mickey Mouse restructuring. They're talking about proper detailed restructuring of awards that won't be done overnight but will be monitored by the Commission, and that will be done in conjunction award-to-award, not awards in isolation of each other.

Looking at all that, it's even more reason ... I mean, I don't believe that the Commission sees any more than unions giving the commitment to agree to review the structure, any more than that involved in them granting the 3%.

Now if we're prepared to do that now, we say that we should be given the 3%

MR LENNON: now and not have to go through so-called negotiations which could take any amount of time.

I'll just give you some indication, Mr President, of the commitment that we have given and how it's affected wage rates.

In 1985 we got 6.5% against an inflation rate of 8.2%; in 1986 2.3% against an inflation rate of 9.8%; in 1987 $10 or around 2.5% against an inflation rate of 7.1%, and in 1988, $6 or around 1.3% to date with a maximum ... saying in this year, the balance of this year of 3%.

PRESIDENT: And what's the inflation rate for '88?

MR LENNON: .... It's not out yet. Well, it's not out. Of course ... wait till the end of December.

PRESIDENT: It's around 7% or something ...

MR LENNON: Yes.

So you can see, Mr President, that we have been extremely patient in waiting for real wages to be improved over time.

I'll just quickly summarise this and then we'll go to the specific changes in the principles that we're seeking.

We propose 3% and $10.00, together with access via specific principles to process secondary claims on the basis of the limited impact on wages in '88/89.

I can't stress this point enough. Any wages package will need to be consistently applied if a centralised system is to operate to maximum effect.

We believe that a system of wage fixation reflecting the principles and wages outcome that we have put is both appropriate and necessary in the context of the current economic equity and industrial relations circumstances.

In our submission, such an outcome would meet the necessary balance between conflicting demands on a wage fixation system which will generate necessary commitment and support, providing a basis for a workable system of wage fixation in the current economic circumstances, and providing the basis for a wage

MR LENNON: fixation system which is economically responsible and sustainable in those circumstances.

Now, if I can just quickly take you to the principles.

COMMISSIONER WATLING: Before you take us to the principles, Mr Lennon, are you going to place a submission before us on the question of matters that have already been to Anomalies Conferences and been determined as arguable cases and been referred for hearing, and those cases that are part-heard or applications currently before the Commission?

MR LENNON: Yes, I want to come to that, Mr Commissioner, when we got to the anomalies and inequities. As you know, or as I've indicated already ...

COMMISSIONER WATLING: Well you deal with it then. I'm just foreshadowing that I'd like to hear something on that.

MR LENNON: Right.

First of all, wage adjustments. The major change that we're seeking there, apart from the one we've already identified and had a long discussion on now regarding the 3% and the $10.00 and operative dates regarding those is, of course, the fact that we have sought a deletion of the ACAC's point (d) and a change to their point (e).

Our experience with the second-tier system leads us to request this change which envisages the Commission granting retrospectivity in some cases.

I refer, of course ... the Commission would be well aware of the problems in the Fire Brigade's award around Christmas last year and early this year where, prior to the increases being granted, the Cabinet had to

MR LENNON: formally endorse the agreement that was reached between the Fire Brigades and the Office of Industrial Relations.

That took some considerable time. The agreement between the parties was actually reached, I think, around November of 1987. Cabinet didn't come to consider the matter until, I think, February of 1988.

The Union was very quick to lodge the application in November of '87 consequent upon the agreement between the parties and yet they suffered ... or the increase was delayed as a result of Cabinet not formally putting its imprimatur on the agreement.

It was an unjust, unreasonable circumstance, which resulted finally in the Fire Brigade employees in receiving their 4% second-tier increase around 6 months later than what they should have done.

Now in those circumstances, we would have said that it should have been open to the Commission to have regard to all those circumstances when considering the date of operation for the 4%.

We can see that coming up again under this new system, unless the Commission is granted the discretion to allow arbitration.

We had another example the other day. I don't want to refer to it too much, but in the case of superannuation in the public sector, where between one hearing and the next, for one reason and another, the Cabinet hadn't been able to consider the latest position between the parties.

And therefore, we were unable to report any meetings or any progress between one Commission hearing and

MR LENNON: another Commission hearing.

And, of course, in the long-winded process that the Government wishes to adopt with respect to wage and related matters for its own employees ... and unless this Commission is granted a discretion, then we can see all sorts of problems arising in this new system, as with the last, on operative dates.

So we are simply suggesting that you should, in this instance, now that the opportunity has arisen, give yourselves the opportunity to have the discretion to grant retrospectivity where you deem it appropriate.

And that might ensure that the Cabinet meetings in the future attend to all the wage-related matters before it, rather than deferring them from one meeting to another.

And also it would ...

PRESIDENT: But if we granted retrospectivity and they didn't like the decision, they might wish to try out another system.

MR LENNON: Yes.

MR HOLDEN: Wouldn't be the first time, would it?

MR LENNON: Again, on superannuation, the only change we sought there, Mr President, relates to the retrospectivity, and I've already referred to the instance where we've been subjected to, now, a delay in consideration of the superannuation in the public sector.

And we've sought an operative date formally before the Commission of 1 August. The Government have indicated an operative date of 1 January.

Now between 19 July, I think, and the hearing date of 17 August, I think it

MR LENNON: was ... yes, 17 August, last week, we were unable to have any discussions with the Government representative, not because they didn't want to meet us, talk to us, but because they're unable to get instructions from the employers because the Cabinet hadn't considered the current position.

MR LENNON: Now if we are going to have to pay for that delay by not being able to get the operative date altered, simply on the basis that Cabinet continues not to discuss the matter, and when we bring it here for arbitration we get no recourse on operative date, even though the matter is totally out of our hands, and totally out of the Commission's hands.

And, of course, the Cabinet for one reason or another hasn't been able to consider the matter.

So, again, we believe this Commission should give itself the discretion (that's all it is) to grant retrospectivity where it deems it appropriate.

We haven't asked for the same matter with respect to supplementary payments, because strangely the Federal Commission has indicated that with regard to supplementary payments that it will allow retrospectivity, and yet with superannuation and others it said not.

And I refer you to page 13 of the ACAC decision, point (e), where it says:

> "The date of operation of any supplementary payment will be determined by the Commission".

And yet for all others it says no retrospectivity. And yet for supplementary payments, strangely, it takes a different course. It steers a new line of attack, and says it will grant retrospectivity, perhaps.

On conditions of employment, page 6 of our submission, as I've indicated at the outset, Mr President, this change is supported by the Tasmanian Confederation of Industries. And our sole motivation in seeking the change is to try and tailor this decision so

MR LENNON: that the Commission isn't tied up in Full Benches interminably, which would disallow other matters getting any precedence before this Commission at all.

We recognise that with five members, it's not capable of undertaking the number of Full Benches that the Federal Commission may be able to.

In any event, any decision of a single Commissioner in this Commission is always open to appeal by disagreeing parties on either side.

So our motivation in altering the conditions of employment principle, with a full stop coming after the second flow-on, is to free up the system as much as we can.

PRESIDENT: Well, of course, there would simply be nothing to stop any party making application for a matter to be dealt with by a Full Bench.

MR LENNON: And nor yourself determining as such, Mr President, in accordance with the Act.

What we are trying to do is to stop an exclusive situation occurring where every time a conditions of employment change comes, except where it is a flow-on of a test case, it has to go before a Full Bench. That's the way that principle reads at the moment.

If I can come to the anomalies and inequities, we would see the anomalies and inequities procedure continuing as is, except we would see the 4% ceiling being removed.

We believe the system has worked well, except in isolated circumstances, the cases ...

PRESIDENT: Would you elaborate on that, Mr Lennon?

MR LENNON: No, Mr President, I don't think it wise for me to elaborate. I understand the Government has come with a bag full of submissions, so ...

But certainly, I mean, we believe that the anomalies and inequities principle has worked well within the spirit and intent of that principle.

There are a number of cases in my office at the moment awaiting to be brought here, which we haven't submitted in view of the fact that you've been getting sunburnt. And we have had discussions with the Tasmanian Confederation of Industries who are totally in support of this, in our proposition that that principle should continue unhindered.

It is envisaged, I believe, within the ACAC decision that the operation of the anomalies and inequities principle would be suspended for some time.

We don't support that, and neither does the Confederation of Industries, which I think demonstrates the fact quite clearly to this Commission that both of us believe that the principle has worked effectively, that there hasn't been any break out as a result of the principle, and that the discipline that the principle has demanded has been forthcoming, and that in the main, the applications before yourself as President of the Anomalies Conference have not been contrived. Because I cannot remember a circumstance in fact since the last National Wage Case where you have thrown out at an application without allowing it to proceed before a Commissioner.

So, in other words, you have found arguable cases, or determined the matter there and then.

We believe some minor alterations to the wording are necessary to bring it

MR LENNON: back into line with what's envisaged. That's why we have suggested the alteration in the procedures.

The first one at (c)(i) clause is to bring that back into line with what occurs at the moment, as is the alteration we have suggested on page 9 at point (2), to allow the discretion of a single commissioner or a Full Bench.

And, again, point (3), well that's as is in the National Wage Case, but that does allow discretion to yourself in circumstances where you deem it appropriate.

And we've deleted (4), because (4) really was the paragraph which suspended the operation of the anomalies and inequities principle until probably 1990, or at least July '89.

So in answer to your question, Mr Commissioner Watling, the only alteration that we would see to the anomalies and inequities principle, post today, or post this decision, would be that rule we had, if you like, that once you'd received your 4% second-tier increase under the old system employees couldn't come back for a hearing under anomalies and inequities (and that was a principle which you enunciated yourself, Mr President), we would see that now as dead and buried, and that anomalies and inequities claims could proceed on merit.

MR LENNON: We had enunciated, or the President had enunciated ... I shouldn't interpolate that we ever agreed, but the President had enunciated a position where he will not entertain anomalies and inequities applications where employees have received the 4% second-tier increase.

It had to be done at the time that the 4% second-tier increase was sought, or not at all; that's if I've correctly summarised your position. We would believe that that should now be removed ... that barrier, and that we should move on from here.

That again, the dropping of that position, is again supported by the Tasmanian Confederation of Industries.

PRESIDENT: Notwithstanding the fact there are 47 ...

MR LENNON: Well the problem ...

PRESIDENT: ... awards ...

MR LENNON: ... we perceive, Mr President, is something you were discussing with us earlier on, and that is, that if employees hadn't received the 4% second-tier increase, and they get it now, then you were saying that the structural efficiency principle was not open to the employers or to the employees.

It may be that some of that's going to be done through anomalies and inequities. We're not sure. What we're trying to do is free up the system, say that all hearings of the Commission relating to this decision don't have to go to Full Benches. The way it's written at the moment, they do.

COMMISSIONER WATLING: So increases in excess of the 3% would go to the Anomalies Conference?

MR LENNON: No, not necessarily. They may go

MR LENNON: there, either the Anomalies Conference or in accordance with wage adjustment ....

Really it's dependent ...

COMMISSIONER WATLING: So you're looking reasonably under the old system, or the system we currently have. We have a sifting process, at the moment, through Anomalies Conference for claims in excess of 4%. You're saying that that will go by the board, and any claims in excess of the 3% will go to a National Wage Case proceedings or a Full Bench of the Commission.

MR LENNON: Or an Anomalies Conference.

COMMISSIONER WATLING: Does it mean that if you leave wage adjustments (e) worded as it is?

MR LENNON: All I say, Mr Commissioner, is that ...

COMMISSIONER WATLING: I don't know, I'm just asking the question, because ...

MR LENNON: Well I don't believe it does. I just don't think ...

COMMISSIONER WATLING: ... it could be read that ...

MR LENNON: ... it could read, but we're saying that we ... by leaving anomalies and inequities principle as it is, with the changes we've made (in other words, the current process remains), we're saying that it is open to us to pursue claims through the anomalies and inequities principle.

Now if we don't make the alteration, it's not open to us, and therefore the only way that increases can be sought is through the process you've just announced. By freeing up the anomalies and inequities principle, we're not opening the floodgates to the system through a back door, but simply restoring a process which has worked well and, in the main, has been used to remove anomalies and inequities in isolated cases, in the

MR LENNON: overwhelming circumstances. There have been cases which affect one or two employees, particular awards. And there have only been one or two applications that I can recall where the flow-on or the cost implications have been substantial.

COMMISSIONER WATLING: I'm not arguing that, I'm really ... where does it say in your draft document that claims in excess of 3% can go to the Anomalies Conference?

MR LENNON: It doesn't. It doesn't specifically say that.

COMMISSIONER WATLING: No.

MR LENNON: But what it ... it is as important for what it doesn't say as for what it does. It doesn't say that the only way that claims can be processed in excess of 3% and $10 are via the National Wage Bench or specially constituted Full Benches.

COMMISSIONER WATLING: Well in Wage Adjustments (e), it does say that.

MR LENNON: Oh sorry, yes.

COMMISSIONER WATLING: That's what I'm trying to drive at. Like it's ...

MR LENNON: Beg your pardon.

COMMISSIONER WATLING: So do you get what I'm driving at now?

So to support your argument, you've obviously got to seek a further amendment to Wage Adjustment (e), surely.

MR LENNON: Yes. So that we can probably interpolate the agreement between the TCI and the TTLC in this, and we should add the words at the end of (e), `or by the anomalies and inequities procedure'.

COMMISSIONER WATLING: So you want us to alter our Exhibit TTLC.1?

MR LENNON: Please. You've convinced me on the

MR LENNON: arguments.

COMMISSIONER WATLING: I'm not arguing it at all. I'm asking the questions to try and find the answers.

MR LENNON: Sorry. So if the Commission ...

PRESIDENT: Is there any objection to the application to amend?

MR ABEY: No, Mr Commissioner.

PRESIDENT: That being the case, the application to amend is granted.

Would you not also wish to change the word `national' to `State' wage case?

MR LENNON: Yes.

I'll just make that clear ...

PRESIDENT: Wherever appearing?

MR LENNON: Yes, I think so. Yes.

I'll just repeat that then. After the ... :

> " ... or before a specially constituted Full Bench, or in accordance with the anomalies and inequities procedure".

PRESIDENT: Yes.

PRESIDENT: So that we'd then have a situation, would we not, Mr Lennon, of one group of employees having a potential capacity to seek a 4% second-tier maximum adjustment and another group, in fact, including that same group, having a capacity to go, via an Anomalies or an Inequities Conference, to obtain further increases in excess of 3%?

We have to keep the 4% entitlement alive, don't we, for 47 awards? Why 4%?

MR LENNON: Why 4%?

PRESIDENT: Yes.

If you have said, `Well the 4% is dead - the 4% limit', are you saying or implying that that is dead, except in relation to those 47 awards?

MR LENNON: The 4%?

PRESIDENT: Yes, with offsets.

MR LENNON: Well I think that's what we're saying, yes. I mean, you don't interpret it as saying anything different, do you?

PRESIDENT: It's just ...

MR LENNON: There are cases which are ... I mean, excepting those case which are not yet concluded, EZ. There may be others, I'm not a hundred per cent aware but ...

PRESIDENT: Yes. But you want us to include a savings provision ...

MR LENNON: Yes.

PRESIDENT: ... that, in the appropriate circumstances, could allow a maximum of 4% for restructuring and efficiency in addition to `(e)', as amended under TTLC.1, which would, in the appropriate circumstances, permit further increases in excess of 3%.

MR LENNON: Yes.

COMMISSIONER WATLING: Otherwise you'd have to go to the Anomalies Conference to get the second-tier adjustment.

MR LENNON: Yes.

COMMISSIONER WATLING: And if get the second-tier adjustment plus the 3%, it's 7%, so you'd definitely be off to an Anomalies Conference or a National Wage Case or a Full Bench or a Full Bench in general.

MR LENNON: Well the only difference in what you're just putting and what I'm saying is that the way that we had (e) written (and this is the mine field, of course, we're all getting ourselves involved in with claims not outstanding) was that we say that the 3% is there, is right - 1 September and $10.00, 1 March. Any 4% claims which are outstanding would either have to be via the anomalies and inequities procedure or a specially-constituted Full Bench.

Currently they don't necessarily have to go to a Full Bench. It goes to a single commissioner.

So you're right. We would need a savings clause put into the decision to protect those people who haven't yet concluded the 4%.

But all of this, of course, is hypothetical unless we can get the 3% from 1 September.

PRESIDENT: If you get 3% from 1 September then we uncover, in a sense, a further potential claim for more than 3%, because once restructuring commences there could be further claims made under (e).

MR LENNON: Yes, that's right.

And, of course, the way in which the restructuring and efficiency principle comes into operation is

MR LENNON: something which this Commission has now the opportunity to clarify for all of us in its decision, how you see it operating, and so on.

PRESIDENT: Are you saying ... you said `restructuring and efficiency', or did you mean `structural efficiency'?

MR LENNON: Oh, structural efficiency, sir, I meant.

PRESIDENT: Are you going to tell us what it means?

MR LENNON: No, in a word. I'd like to hear from the employers. But ...

PRESIDENT: And I'm sure we would like to hear from both.

MR LENNON: Well, in summary, Mr President, all we see as being necessary at the moment is our preparedness to review the structure of awards in accordance with the board outline given at page 11 or at pages 1 and 2 of ours, the details of which could be worked out between the parties and monitored by the Commission.

In its decision, the National Wage Bench didn't profess to have a complete understanding of what structural efficiency changes would be necessary award by award. But it seems to me those that oppose the increase to employees operative from 1 September believe that all the details should be known and completed before the 3% comes in play.

Now that's not a workable wages system by anyone's definition. That's a recipe for disaster and will probably mean that structural efficiencies doesn't take place wherein, in a number of cases, you'll probably prove that it should, because we won't be able to give the commitment to the system because it won't deliver a wages package that we can sustain amongst our membership.

MR LENNON: And as I've indicated to you earlier in the main, particularly in the private sector, quite a number of employees are out there pressuring us to dump the system completely and to go it alone, because it's delivered them nothing.

And that's why we're asking you to give yourselves the discretion for retrospectivity and to grant the increase across-the-board now, provided we're prepared to give the commitment on the understanding ... or after, if you like, we've given the commitment to review the structure of awards and not to make claims, except where consistent with the principles.

If those things are done, we say there's no barrier to us getting the increase.

We will have a workable system. We will be able to review the structure of awards with the employers, to be monitored by this Commission.

MR LENNON: That's the best approach we can take. It's an approach which will tailor this decision to the needs of Tasmania, Tasmanian employees; a system which will be capable of this Commission being able to implement given it's size, and a system which will enable the structure of the awards to take place without industrial pressure, which will inevitably arise if we're going to have this award-by-award process.

The only system which is in the public interest to introduce into Tasmania at this time is a system which grants the increase across the board. It's a system that the Government wanted, albeit their operative date is 1 November and we're asking for 1 September. But they themselves envisage an across-the-board increase.

Unless they're going to back away from that this morning, that's what they envisaged both in their submission to the ACAC, which we've indicated to you today, and in the press reporting of their submission which took place one or two days prior to their submission.

They envisage an across-the-board increase in two bites. I acknowledge their operative dates were different, but nevertheless, unless they're going to back away from it this morning, they envisaged a 3% applying right across the board from 1 November. What we're asking for this morning is that that operative date that they sought be brought forward to 1 September in line with the Full Bench's decision of the earliest available date for the 3%.

At this stage I've got no further submissions.

PRESIDENT: Thank you.

Mr Lennon, Mr Commissioner Watling did question you on the matter of

PRESIDENT: part-heard applications and I think you then went on to address the anomalies and inequities principle. But I think it would assist us if you were to also address us on the matter of substantially part-heard applications, or applications lodged but not yet heard.

The substantially part-heard matters that were subject to the 4% limit but may ... let's assume, had not been through an Anomalies Conference would, I believe, still be subject to that 4% limit, would they not?

MR LENNON: Yes.

PRESIDENT: If they had been through an Anomalies Conference.

MR LENNON: I think in all reasonableness, Mr President, applications which were substantially part-heard in the Commission, we would reasonably expect to be heard under the current principles. It would be difficult to have any other system.

PRESIDENT: Under the current principles or the principles that applied at that time?

MR LENNON: Well, the principles that applied at that time. I don't think you can have any other system. We can't keep moving in and out of systems. The application was lodged in accordance with the principles at the time. It should be concluded in accordance with that procedure. That was understood at the time that the application commenced. If an organisation wishes to withdraw that application now, that's up to them, and of course the Commission may or may not accede to that.

So far as the 4% limit is concerned, I think that the position that you've adopted is the correct one; what you suggested, that the limit of 4% should apply, except where granted a piercing of that 4% by an Anomalies and Inequities Conference.

PRESIDENT: Now what about claims that were lodged but upon which no hearing had taken place. Would you say in those circumstances those claims would be dealt with under the principles current at the time the matter came on or comes on for hearing? In other words, the new principles, if any.

MR LENNON: I think for consistency, Mr President, we would suggest that claims lodged but not heard, which is what you're talking about now ...

PRESIDENT: Yes.

MR LENNON: ... should operate under the current principles.

PRESIDENT: That's the principles that obtain at the time the hearing is scheduled.

MR LENNON: No, the principles that were in place at the time the application was made, I think.

PRESIDENT: In other words, the 4% limit would apply.

MR LENNON: Except we would say that given that this has now come in, that the opportunity ought to be there for the organisation to withdraw the application. Where the organisation seeks not to withdraw the application and wishes to proceed with it, then the application will be heard in accordance with the principles that were in place at the time the application was made.

PRESIDENT: That could be a bit messy.

MR LENNON: My problem is I'm not aware of what applications are in at the moment which haven't been heard.

PRESIDENT: Well, there are a lot. Perhaps you might like to consider that question over lunch, and there are a number of situations that you might think about. For example, and I know the TPSA would have a view on it, there have been some claims, quite substantial claims made. I

PRESIDENT: wouldn't say they were substantially part-heard necessarily, but they are important matters. I'm thinking of the professional officers case as one, for example.

Now as it stood at the time, it was subject to the 4% limit unless it went through an Anomalies Conference. If that were to proceed now it might be argued that it would be subject to the current principles.

You've got others, organisations that have lodged, and through no fault of their own - simply because of the Commission workload or the absence of someone - just cannot be heard or have not been heard.

Now it might be argued that had they been heard under one package there was a potential for more than under the current package. But one thing is certain; I don't think we should have two or three systems in operation.

The substantially part-heard (if I could call it a principle) procedure I think is well-known, and the only thing that isn't well-known is what constitutes substantially part-heard.

PRESIDENT: ... give some consideration .... for example, to whether or not the President makes a decision or the parties agree or something of that nature.

COMMISSIONER WATLING: Probably one of the other points you need to take on board too is applications that have already been through an Anomalies Conference have been found to be an arguable case and been referred to a single commissioner. What status do they now have under your proposed system?

DEPUTY PRESIDENT: And while you're preparing your list, Mr Lennon ...

PRESIDENT: Shopping list.

DEPUTY PRESIDENT: ... you might just address yourself to the question of agreements.

As I understand it, your application is to vary all awards and agreements, but I really wonder how this Commission can vary agreements at all.

It can either approve them or not.

MR LENNON: You set the precedent at the last hearing.

DEPUTY PRESIDENT: Pardon?

MR LENNON: I think if you look at your decision, the last decision - I stand to be corrected - and I think you'll find that you ...

PRESIDENT: Well that should have been read as a recommendation, Mr Lennon.

MR HOLDEN: Is that a retrospective decision?

MR LENNON: We'll examine that anyway.

DEPUTY PRESIDENT: Yes.

PRESIDENT: Yes. Well then, would this be a

PRESIDENT: convenient time ...

MR LENNON: Sure, yes.

PRESIDENT: 2.15?

...

PRESIDENT: Are there any alterations to appearances?

MRS SMYTHE: **SMYTHE E.**, if the Commission pleases, appearing for the Federated Ironworkers' Association.

PRESIDENT: Yes, thank you, Mrs Smythe.

Mr Lennon?

MR LENNON: Thank you, Mr President.

Just prior to the luncheon break you posed ... well, yourself and other members of the Bench posed a number of questions for us to consider at the lunch break.

Firstly, you asked what constitutes a substantially part-heard case. We would suggest the following: matters where substantive submissions have commenced; matters that have already progressed through the Anomalies Conference (in other words, matters where an arguable case has already been found by the Anomalies Conference and have been referred to single commissioners or a Full Bench); and any other matters so determined by the President (that's the catch-all phrase).

We would also indicate our view that all cases that have been deemed to be substantially part-heard should continue to be progressed under the existing principles, i.e. the 1987 principles.

The second question which was posed to us by Commissioner Watling was: what is the status of applications that have proceeded through the Anomalies Conference. I think we've just answered that in our answer to question 1.

Question 3 which was posed by Deputy President Robinson: what is the status of agreements in respect of the wage increases sought. Here I'd like to refer the Commission to its

MR LENNON: decision, the Full Bench decision on 15 February 1988, which was an application by the TTLC to vary awards and agreements in line with the national wage decision of 5 February '88. Joined with that matter was an application by the TPSA, an application by the Australian Railways Union. At page 6 of that decision the Full Bench said, and I quote:

> "In view of the expressed wishes of the parties, wage rates contained in agreements will be similarly adjusted".

So as I indicated prior to lunch, the Commission has already set the precedent that it is prepared to vary agreements in line with national wage decisions and flow-ons sought therefrom.

PRESIDENT: It might be prepared to do that, Mr Lennon, but do you believe the Commission has the power to direct that that should be done?

MR LENNON: That's another argument, Mr President.

As the Commission has already done it for national wage increases, we would see it appropriate to continue that process.

COMMISSIONER WATLING: Mr Lennon, I've checked a couple of them during the luncheon adjournment.

Certainly the agreements in my portfolio have only been varied where the agreement specifically stated that the agreement could be varied through National Wage Case decisions.

There are some agreements that don't contain such a provision and they weren't varied on the last occasion.

PRESIDENT: Should the Commission make a recommendation to the parties in

PRESIDENT: relation to agreements, Mr Lennon?

MR LENNON: Well that's the very least it should do, Mr President.

PRESIDENT: In the expectation that its recommendation will be accepted.

MR LENNON: 4% second-tier adjustments: we support the proposal being advanced from the Bench this morning, but a savings provision should be incorporated to allow for outstanding second-tier adjustments to be finalised in accordance with the 1987 principles.

Further, we reinforce the point made by us this morning that claims by employers to delay the 4% second-tier adjustments should be allowable only after substantiated argument by them in accordance with the economic incapacity to pay principle.

I think that finalises our submissions to date, Mr President.

PRESIDENT: Did you answer the question regarding applications in our list that we should not yet come to hearing?

MR LENNON: I thought we ...

PRESIDENT: Or did we agree that they would automatically be heard in accordance with the principles current at the time of hearing?

MR LENNON: We wouldn't see applications which have been lodged not deemed to be substantially part-heard either by one of the scenarios that we've indicated in our answer, or by yourself having the discretion to so do being heard under the current principles, but under the new ones.

Mr President, there's one other point that we would like to make just to make it abundantly clear to the Bench exactly how we see the new system. There's an analogy I think that can rightly be made between what's

MR LENNON: proposed in our application today and what's applied under the two-tiered system.

We believe the 3% and the $10 are akin to the first tier increase under the current system; that is, their cost of living rises.

We believe the increases or the change may be allowable under the structural efficiency principle is akin to the current second tier, except that there is no built-in expectation within the principle for a wage rise, or, indeed, there's no built-in expectation that in the principle that a change to the structure in fact would take place.

MR LENNON: That's the main difference. The Commission, I'm sure would be, or would remember, that under the two-tiered system, there was an expectation of a 4% definable increase as a result of offsets being given. We see no expectation in the structural efficiency that any offset should be given to receive the 3% and the $10, except a preparedness by the union movement, and its members, and the employees generally, to review the structure of awards.

Nor do we see an expectation under structural efficiency that anything necessarily will arise out of it. A review may be done, and it may be determined by agreement to do nothing after the review.

PRESIDENT: So the 3% plus $10 is for two reasons: 1) for the reason that those who give the commitment are prepared to have their award reviewed ...

MR LENNON: Yes.

PRESIDENT: ... whether or not the review results in any change; ...

MR LENNON: Yes.

PRESIDENT: ... and 2) as a contribution toward maintenance of the purchasing power of wages.

MR LENNON: Yes.

PRESIDENT: Thank you, Mr Lennon.

MR LENNON: We'll reserve our right to respond, after having heard the submissions of ....

PRESIDENT: There may be nothing to respond to, Mr Lennon.

MR LENNON: You're probably right.

PRESIDENT: Depends on how you see it, I suppose.

Mr Vines.

MR VINES: Thank you, Mr President.

Sir, the TPSA and the Heads of Government's Organisations Association supports the TTLC submissions, and indeed, the amendments to the application.

We also, sir, have taken note since early July of the comments that the Premier has been making publicly, and for once we find that the Association is in total agreement with Mr Gray.

In particular, I refer to the comments that Mr Lennon alluded to earlier, and also one that wasn't quoted, which appeared in `The Mercury' on 7 July, under the heading of `Gray's Glasnost with the TPSA'.

In that, Mr Gray is quoted as saying that living standards have dropped and public servants needed a catch-up.

We wholeheartedly endorse that, sir, but clearly, it's not only public servants, it's all other employees in Tasmania.

From our calculations within the State Service, since wage indexation was reintroduced in 1983, State Service employees have dropped back or have fallen short of CPI increases of around 12%.

Clearly there is a need for a catch-up of salaries. Our claim however, does not seek a full catch-up. What we are trying to do is to reintroduce a mechanism whereby living standards are maintained at a decent level.

In our submission, sir, the second-tiered or the two-tiered wage fixing system, which has thankfully come to an end, has failed quite miserably in maintaining any degree of living standards.

It's, in our opinion, created

MR VINES: anomalies, and distorted relativities, both within and between awards. And it has, as well as not maintaining, quite possibly substantially decreased the living standards of workers.

We would submit that through the last ... or through the current wage fixing system, employers have taken, or have looked for unjustified cost neutral requirements in any increases that have given to employees.

Whilst they may have saved a few dollars, it would be our submission, that the long-term efficiency of industry, and indeed, the State Service, has only marginally improved because of the employer reluctance to look at some of the real efficiency issues, and on the basis that the employers have indicated only an interest in eroding award provisions.

What employers have succeeded in doing, or at least what our employer has succeeded in doing, is saving money, but that does not necessarily mean improved efficiency.

The Association, in the main, supports the National Wage Case decision which was handed down on 12 August by the Federal Commission, and in particular, our support is related largely to the fact that this decision at long last does away with any concept of cost neutrality.

We note, in particular, the comments made throughout that decision, that the decision is not aimed at cost cutting, or to use their quote, `short-term benefits'. What it does do is seek to provide a system which will provide for improved efficiency throughout industry, and will also provide for some maintenance of living standards.

We also note - and clearly it's

MR VINES: something that will have to be tested later on - the provision within the decision of the National Wage Case in relation to special cases, where those issues that don't fall within the prescribed increases of 3% and $10 can still be pursued.

In view of all of that, Mr President, the Association, on behalf of its members, seeks a 3% salary increase operative from 1 September 1988, and a further $10 increase from 1 March 1989.

We're prepared to enter into the structural efficiency exercise, and give the necessary commitment to the wage fixing principles.

It is our submission, sir, and as Mr Lennon has already said, that the only justification required to win that 3% increase is indicating that preparedness to enter into a structural efficiency exercise.

That is indicated in the first paragraph of the method of implementation in the National Wage Case decision at page 7, where the Full Bench had indicated that they decided that the increases they're prepared to allow should be available to all employees where the relevant union indicates a commitment to work through the system.

And, I note, in my copy of the National Wage Case decision we've in fact underlined the word `all'. And I think that may give the President some relief in relation to his question earlier on about awards such as the Apprentice-at-Law Award. The intention of the Full Bench of the Federal Commission was clearly to award an increase which was applicable to all employees.

MR VINES: Also, at the introduction of the structural efficiency principle on page 11 of the principles, again it is clear where the Full Bench has indicated that increases in wages or salaries as provided for in the decision shall be justified if the unions party to an award formally agree to cooperate positively in a fundamental review of the award.

We can, with pleasure, advise the Commission that we have already indicated to the Premier that as far as the State Service is concerned and those areas of the State sector or public sector, that we are prepared to enter into such an agreement, that we are prepared to look at a complete structural efficiency exercise throughout our awards and agreements. And to that extent we wrote to the Premier on 18 August 1988, and I'll just quote one paragraph of that letter that says:

> "Given that the National Wage Case decision requires unions to formally agree to cooperate positively in a fundamental review of their awards with a view to implementing measures to improve the efficiency of the industry and to provide workers with access to more varied, fulfilling and better paid jobs, Tasmanian Public Service Association hereby indicates to you that we are prepared to give such a commitment".

I'll reiterate that commitment to this Commission as well, that for our awards we are prepared to enter into such an exercise, and also for the record indicate that we are prepared to commit ourselves to the wage fixing principles as proposed by Mr Lennon earlier today.

PRESIDENT: Mr Vines, just while you're drawing breath, am I correct in my recollection that as a condition

PRESIDENT: precedent to the 4% second-tier adjustment that was extended eventually to your members, you agree to a restructuring of awards.

MR VINES: We agreed to a review of several of our ... I think it was a general review of awards. But I think what is proposed within the structural efficiency exercise this time around is quite a degree more encompassing that what was envisaged in the 4% second-tier agreement.

PRESIDENT: Because we have no idea what was envisaged, because we didn't do the costing.

MR VINES: No, well nor did we, sir, but to both of those statements of yours, the question in relation to that restructuring of awards then was, for the purposes of the 4%, a preparedness on our part to enter into those sort of discussions.

In some areas they have started, but they are primarily in relation to classification structures within those awards.

I think the points that have been indicated within the National Wage Case decision indicate quite clearly that what is envisaged in the structural efficiency exercise is quite in excess of what has been provided for in the 4%. And I dare say the Federal Commission itself is of that view with, from what I understand, the components of the 4% from the metal industry in relation to restructuring of awards, and yet again they'll be entering a similar exercise with this structural efficiency.

I think they are primarily two quite different aspects.

PRESIDENT: Are you suggesting that this new principle, structural efficiency, has not, to the best of your knowledge and belief, been addressed by any

PRESIDENT: other parties to any other awards as part of a 4% offset?

MR VINES: Not to the same degree, sir.

I think it's a much broader ... I can't remember whether it was in formal proceedings or in a discussion earlier today, sir, it was indicated that the 4% restructures were looking around the fringes of the issues. This principle is aimed at getting right to the heart of it.

So just in conclusion, sir, it would be our submission that the PSA has met the criteria for the 3% increase. It is further our submission that the Government has the money to pay for that increase and that those awards to which we are a party can be increased from 1 September 1988.

PRESIDENT: Are there any additions or exclusions from the list of awards that appear in your application?

MR VINES: Are there any exclusions?

PRESIDENT: Yes, or any additions.

MR VINES: Not that I've been advised of, sir, no.

But of course all of those awards are encompassed in the TTLC application.

PRESIDENT: There appear to be three nursing awards.

MR VINES: There does. Well, clearly there are three nursing awards in there, sir. At this stage I think they ...

PRESIDENT: Perhaps Mr Lennon can help us?

MR VINES: Well, I guess that given that we're not the party principal to any of those awards, they wouldn't be increased through our submissions, and I would imagine that the nurses will make submissions in relation to their own awards.

PRESIDENT: I don't believe they've entered an appearance in these proceedings.

MR VINES: Well, I don't have any instructions whatsoever in relation to nurses awards, sir. We're a party to them, and all of the awards to which we're a party have been included in the application.

PRESIDENT: Then you pursue that claim, do you?

MR VINES: Well, I think in relation to all of those awards there are some that we are the sole party. It would be our submission that there is nothing which should inhibit the Commission from awarding the 3%, or deciding the to award the 3% to those awards - to all of the awards to which we are one of several parties. There could possibly be a period of, say, 7 days after date of decision for other unions to give a similar commitment, and then those awards would be varied.

If we come at the end of that period and some awards aren't varied, we would have to look at it then. But I would imagine that unions generally would be prepared ... public sector unions generally may well be prepared to give such a commitment.

PRESIDENT: In the event some nurses recovered federally, would your organisation be, being a State registered organisation (.... I am aware of the other body)...

MR VINES: It has no relevance in this one, sir.

PRESIDENT: ... notwithstanding, continue to seek a State award for nurses?

MR VINES: Well, we would be excluded from any Federal award representation.

PRESIDENT: Yes. So you would maintain the State nurses award, would you?

MR VINES: I don't know that we've determined our position on that as yet, sir. I definitely don't have instructions for today.

So that, in conclusion, would be our submission, Mr President, that the Association has met the criteria. We're prepared to give that commitment to the Commission, that firstly, we will enter into a structural efficiency exercise for our awards. And secondly, we will commit ourselves to abiding by the wage fixing principles, as outlined.

And we would reiterate our submission for an operative date of 1 September, and note that for possibly one of the first times in history a decision operative on the first pay period commencing on or after 1 September would in fact fall on the first day of a pay period of our members, as I said, for probably the first time in history.

If the Commission pleases.

PRESIDENT: Thank you, Mr Vines.

MR O'BRIEN: Just briefly ...

PRESIDENT: Mr O'Brien?

MR O'BRIEN: ... I'd like to support the submissions of Mr Lennon, particularly submission as to the comparison between the current system and the ... or the proposed current system, I should say, and the first tier of the previous system.

Secondly, to say that this system, we would suggest, would be a fairer system in that it would not, in effect, disadvantage those areas where the question of efficiency has already been addressed. And I would compare that to the last system, which in fact would disadvantage an area where there weren't, for example, restrictive work practices to be traded off against a 4% second-tier increase.

So in saying that, we would indicate our preparedness to give our commitment to the proposed system, as suggested by Mr Lennon, and endorse his comment as to fairness of the application of the increase from 1 September (that is, the 3% increase), and the $10 from the date 6 months subsequent.

Thank you.

PRESIDENT: Thank you, Mr O'Brien.

Mr Holden?

MR HOLDEN: Mr President, on behalf of the Hospital Employees Federation No. 2 Branch, we seek the Commission to delete from the effects of this decision any nursing classifications or any nurse-related awards involved in the public sector.

The Commission may know that a draft award, which it is intended to submit to the Federal Commission, has been delivered to the appropriate employee organisations this morning. Further discussions are to take place as to the operation or non-operation of 3% in respect of that award, assuming that that award is brought into being

MR HOLDEN: by the Federal Commission.

It's my understanding that in the past this Commission has in fact refused to hear matters when an organisation has had an application before the Federal Commission in a similar fashion.

In this case, of course, there is agreement by the parties on both sides that a Federal award should be brought into being. And as such, I think it is therefore reasonable to assume that an award will come to fruition.

Under those circumstances the HEF sees it as somewhat fruitless to pursue the 3% before this State Commission.

In respect of the commitment ...

PRESIDENT: Well, Mr Holden, just on that point. As I note the current package of principles established by the Federal Commission in August still contains the principle regarding first awards covering State employees, and that principle, to paraphrase, means current rates, if you were successful in your endeavours to get a Federal award, presumably you could only get an award that was 3% or 7%, possibly ... 3% certainly, lower than the State rates.

MR HOLDEN: I presume that if a Federal award is brought into being, and that matter is now being handled by Federal officials at the appropriate organisation, in consultation with officials of the Department of Health Services, that, yes, it is correct that a first award would be brought into being under the old principles.

Once brought into being, one would have to say that it's reasonable to assume that it would then fall under the auspices of the new principles, which are effective as of 1 September.

MR HOLDEN: As this new award will not be brought into being until after 1 September, the organisations would then be able to pursue that award within the new principles which have been brought down by the Federal Commission and would have available to them anything that's available to anyone else under Federal awards, or anything that would be available to anyone under State awards, if this Commission picks up the Federal principles.

The second matter the HEF wish to speak to is the matter of a commitment. We are prepared to give a commitment to review awards, subject to an endorsement of that decision by our members in the public sector at stop-work meetings which are to commence in Launceston on 6 September, and to be followed by meetings in Devonport and Burnie.

That decision has been made by an executive of the HEF No. 2 Branch, and it is not far removed from the submission which the amalgamated metal workers have put to Deputy President Keogh in the Australian Conciliation and Arbitration Commission, and which I understand was accepted by Deputy President Keogh.

Our reasons for doing that have to some degree been expanded by both Mr Lennon and Mr Vines. The two-tier system can only be looked on as a failure.

MR HOLDEN: Notwithstanding that a substantial proportion of HEF 2 members are covered by the public sector, the period of time in which they have to wait for their increases is, in the view of the HEF, sufficient to ensure that that system was a failure.

It is most certainly seen as a failure by the HEF 2 members and I'm sure, as President and being Chairman of the Bench on the last occasion that this matter was before the Commission, you'll recall I said then that the HEF gave a commitment that was qualified and the results of the two-tiered system would affect our actions from that time.

The two-tier system has worked only to the benefit of employers. They've been able to dictate when matters move forward or when they didn't; in effect, determine when people got pay rises.

And as pointed out by Mr Lennon, they don't appear to have done too bad a job in the private sector. Only 27 out of 74 awards have moved.

The theory behind this new system brought down by the ACAC is that workers should receive wage increases up front by giving a commitment to review the system.

And as pointed out by Mr Lennon, the 3% and $10.00 really represents a first tier, and may or may not be a second tier, depending on the outcome of the restructuring.

The TCI do not have the resources to put in place officials to represent that organisation with every union in the State in an effort to restructure awards quickly.

And because of that failure on their part, it is important that employees who have suffered from the system - Mr Vines states 12% and I certainly

MR HOLDEN: wouldn't argue with his suggestion that it's 12% - but those people should not suffer any more. Many of them have not got the 4%.

They certainly deserve the 3% now. After all, we're talking about real wage maintenance. We haven't had it in the past. There have been commitments given, but people deserve it. Surprisingly enough, Mr Gray said that. And to me that really is a surprise.

It think it's therefore incumbent on this Commission that they should adopt the proposal as put forward by Mr Lennon for a 3% increase from 1 September followed by a further $10 on 1 March, and direct that the TCI, the Government and the unions enter into immediate discussions with a view to reviewing awards.

Thank you.

PRESIDENT: Thank you, Mr Holden.

Mr Imlach.

MR IMLACH: Thank you, Mr President, and members of the Bench.

On behalf of the Hospital Employees Federation No. 1 Branch, I support the submission put by the TTLC. We support that, with the following observations, qualifications.

Mr President and members of the Bench, our Branch is not in a position as yet to give the commitment required without qualification, but I fully expect that once we've consulted with our members, that we will be able to do that. But as of this moment, we're unable to do it.

But I repeat, I expect we will be able to in the next week or so. And that will include ... we'll be looking at the specific principle of

MR IMLACH: structural efficiency.

I just have to say to the members of the Bench that our Branch, whilst we expect ... or I expect that we will be accepting the system, still does so with some reluctance.

I think I've made this point in recent national wage hearings over the last few years, because I think all of us would understand there are political motivations behind these decisions. And for our part we see them as endeavours to keep the lid on wages, which may be fair enough, but we see that there are other factors in the community that are not being attended to that make compression of wages an unfair practice.

However, I acknowledge that the members of the Bench, and ourselves to some extent, find that these things are outside their jurisdiction.

But I think it's necessary to observe. But whilst we expect to go along with the system, as we have up till now, there are other factors outside this jurisdiction that tend to mean that all our efforts within the system keep wages down.

And as you would be aware, Mr President, and probably the other members of the Bench, we're concerned that there are groups within our area of coverage who have not been able, in recent times, to put their wage cases simply and properly as they ought to be able to. Take, for example, work-value cases, because of the restrictions of the system.

I can think of three groups, at least, in our jurisdiction who are unable to put a simple wage case. And I think that is unfair.

And what it means is that we are negotiating wage increases based upon restrictions that do not take into

MR IMLACH: account simple changes in the duties or the responsibilities of employees in many occasions. And we find that hard to accept.

I endorse and support the submission put by Mr Lennon in relation to part-heard matters, and we support that proposal, members of the Bench.

Our Branch also seeks, along with No. 2 Branch, to have the public sector nurses awards excluded from this application, and that we seek all other awards that may be under our coverage, that they be varied as claimed. That includes nurses in the private sector.

MR IMLACH: If the Commission pleases.

PRESIDENT: Mr Imlach, while you're addressing us it occurred to me that there would be ... consequent on the 4% matters, there were a number of agreements registered. Not all the agreements were couched in the same language. Some, I believe, included a provision to the effect that existing wage rates (and I'm paraphrasing) would be increased by 4%. And you might remember agreements along those lines.

How should we deal with that situation, were we minded to adjust award rates by 3%? Would that mean that those agreements that sit on top of the award would have the effect of adding 4% to 3%?

MR IMLACH: Well, Mr President, to my knowledge all those agreements have since been transferred into the award.

PRESIDENT: Have they?

MR IMLACH: I believe so, yes.

PRESIDENT: I felt that there were a number that simply left the award intact, particularly, I imagine, in the private sector where you have the common rule effect operating and a series of private agreements had been entered into.

MR IMLACH: No, Mr Commissioner, there are four private area awards in which our Branch, in particular, has jurisdiction. The Hospitals Award - the 4% has been applied in that award, except for nurses. I don't claim any responsibility for leaving them out.

The Welfare and Voluntary Agencies Award - both those awards have been amended to the 4%.

The medical practitioners - there's been no agreement for sure, definitely, in that area, so there's been no 4% even approached in that

MR IMLACH: particular award.

And the Dentists Award, as you know, Mr President, is part-heard .... Now they're the only awards, to my knowledge, in the private area that we have coverage. There are one or two groups within the Hospitals Award that were exempt because we were pursuing other matters in that area.

My colleague, Mr Holden, has just advised me that one section of the Welfare and Voluntary Agencies doesn't have the 4%. That's section B, Part B, but I don't think that is the subject of an agreement either.

In answer, Mr President, I think any agreements have been picked up in relation to the 4%. The 38-hour week agreement, some of those have not been properly transferred, although attempts are underway to do that.

DEPUTY PRESIDENT: Mr Imlach, before you sit down, I'm not quite sure why you appear to differentiate between public sector nurses and private sector nurses.

MR IMLACH: Mr Deputy President, those two areas have gone their own way, I acknowledge that. But the private area nurses ... and I make the point that we have been dragged along in that. As secretary of the No. 1 Branch, I don't hide from that. We've had to follow events, and in the private area there has been an agreement signed, but it's got nothing to do with the Federal jurisdiction whatsoever. Nor has it anything to do with this jurisdiction at the moment.

So that legally, as far as I'm concerned, the 3% and $10 is a matter for consideration.

Does that answer the question, Mr Deputy President?

DEPUTY PRESIDENT: Not entirely. I'd be dishonest if I said that it did. But I understand what you say. Thank you.

PRESIDENT: I thought it was a condition of the package that no extra claims, award or over-award, would be made.

MR IMLACH: You're referring to the agreement outside this jurisdiction, Mr President?

PRESIDENT: Yes.

MR IMLACH: Well, I come back to the point that I have made, which I stand alone on maybe, but if that agreement falls down, then I say that our Branch in that agreement and in the Government area has been excluded from many, many vital negotiations. So I'm not afraid to stand up and say that if that agreement falls down we will naturally return where we think this thing should have been to start with, to this jurisdiction.

I just want to make that point.

PRESIDENT: It's in order to opt in and opt out, is it?

MR IMLACH: Well, I was hoping I was making my position clear, Mr President. But you know, the members of the Bench know, that once the Federal jurisdiction intervenes, it's a case of the dams matter all over again, and we have to protect ourselves.

In the public hospital area that has been the path followed by our Branch. In the private hospital area, I repeat, we have very much been caught up in it (and I'm speaking for my own Branch) and much to our chagrin or worse we've been forced to follow on.

But it is quite clear that our Branch would have preferred to have gone in another direction, and if it's possible to go back in those directions, we will do it. But until that happens I want it on the record that we will be seeking that in the private area.

PRESIDENT: Yes, thank you, Mr Imlach.

MR IMLACH: If the Commission pleases.

PRESIDENT: Well, I'll be round to the employers.

Mr Willingham?

MR WILLINGHAM: Mr President and members of the Bench, as it would be known to you and I'm sure to all other parties here today, the Tasmanian Government made its submission to the National Wage Case on 15 July last and, Mr President, I have available copies of that submission if it could be of any assistance to either members of the Bench or any other parties here today.

I don't seek to have them tendered as an exhibit, sir, merely for information.

PRESIDENT: Well, this will be MFI.1.

MR LENNON: Mr President, could I ask what the status of this document is intended to be if it's not to be an exhibit?

PRESIDENT: Well, it's marked for information, he said.

MR WILLINGHAM: I'm sorry, Mr President ...

PRESIDENT: I hope there's been no ...

MR WILLINGHAM: ... I thought I'd made that clear that it was for your information.

PRESIDENT: I hope there's no infringement of copyright or anything like that, Mr ...

MR WILLINGHAM: Copyright of the Federal transcription, sir?

What they're seeking to charge us for it, sir, I think not.

Mr President and members of the Bench, the Tasmanian Government's position before the National Wage Case is summarised at pages 40 and 41 of the National Wage Case decision, Print H.4000.

MR WILLINGHAM: It will be seen that in general terms the Government supported the continuance of the existing system, whilst proposing some amendments to the restructuring and efficiency, work value and service increments principles.

As to general wage adjustments, the Government submitted that there should be a 6% increase, 3% of which would be paid from 1 November and the remaining 3% from no earlier than 1 June 1989.

In the event, Mr President, that the national wage decision provides a notional outcome of approximately 5.1/4%, if the $10 adjustment is referenced to average weekly earnings, for those employees currently paid a weekly wage of $335 or less, the national wage decision represents an outcome of approximately 6%, or a little more depending on the figure below $335 per week.

So in that context, the Tasmanian Government's submission in respect of general wage adjustments accords quite closely with the decision of the National Wage Bench, although the Bench determined a different wage fixation methodology and, indeed, the timing of the increases themselves from that proposed by the Tasmanian Government.

Members of the Bench, it is now almost 5 years exactly since centralised wage fixation was reintroduced - in September 1983. In handing down its decision in the 1983 National Wage Case, the Federal Commission observed that it had set out the requirements of the then new centralised system in some detail.

Sir, if I can refer you to the quote that appears in Print F.2900, at page 48, the Commission noted that:

"The requirements of the new

MR WILLINGHAM: system imposed obligations and responsibilities on unions, employers, governments and tribunals. They must all accept commitment to these requirements for the system to work."

For its part, Mr President and members of the Bench, the Tasmanian Government has supported the centralised wage fixation system ever since the concept was reintroduced. We certainly have not agreed with all decisions which have ensued from National Wage Cases from that time, but consistent with our commitment to the system, we have invariably advocated the adoption of those decisions by this tribunal in our State Wage Case submissions.

On this occasion we again, respectfully, submit that the Tasmanian Industrial Commission should adopt the terms of the National Wage Case decision as being appropriate for the determination of wages and conditions of employment in the State jurisdiction.

Our support for the implementation of the National Wage Case decision by this Commission should be understood to be conditional upon the required compliance commitments being made by unions.

We do, however, ask the Commission as constituted, to consider two matters which, in our view, need some clarification.

First, we are of the opinion that the structural efficiency principle has the potential for misunderstanding and misinterpretation, and therefore conflict. And nothing that I've heard this morning, Mr President, changes that opinion.

Certainly there is a requirement for unions to formally agree to cooperate

MR WILLINGHAM: positively in a fundamental review of an award or awards. .... a view to implementing measures to improve the efficiency of industry and provide workers with access to more varied, fulfilling and better paid jobs.

MR WILLINGHAM: However, we believe it is essential that the parties should, at the very least, identify the aspects of the structural efficiency concept upon which the reviews will focus.

In other words, we say that an agreed agenda ought to be drawn up by the parties to the award or awards, and that agenda should specify the features which the parties intend to examine during the course of these cooperative exercises.

We believe this is fundamental to any prospect of the structural efficiency process being successful.

In then coming before this Commission in respect of the 3% increase, it would be clear to the Commission and all other parties just what the terms of reference are in respect of each and every award.

PRESIDENT: Who would determine the terms of reference, Mr Willingham?

MR WILLINGHAM: Sir, that is a matter of agreement between the parties, and perhaps in circumstances where dispute is between the parties, perhaps determination by the Commission.

There is no suggestion in the current national wage decision we seek you to adopt that the Commission should not have an arbitral role to play, if required.

PRESIDENT: Then, if I understand you correctly, you're saying that this Commission, in dealing with this aspect of your submission, should do no more than suggest or direct that this cooperative approach would include the establishment of an agreed agenda.

MR WILLINGHAM: Yes, sir. Perhaps if you could stay with me, we'll be going into that in a bit more detail and what you're asking may become clearer.

MR WILLINGHAM: As we were saying, Mr President, we believe such a procedure would be of ongoing benefit to employers and employees by avoiding the possibility of future misunderstanding or misinterpretation.

Furthermore, it would establish parameters which will ultimately be of assistance to the Commission in its role as monitor of the progress and eventual outcome of the reviews.

For instance, Mr President (and I use it merely as an illustration), if one takes note of the national wage decision, let us take one element - multi-skilling - one would imagine that multi-skilling may be given a high priority by employers, perhaps employee organisations. If you don't tie that in as an element of the review which is to take place, it is open to either party to the review to say, `No, multi-skilling is not on the agenda'.

Wide publicity was given late last week in the national press to just that circumstance having occurred. In this case, by the BWIU, who said:

> "Multi-skilling is off our agenda".

Now we don't want that circumstance to occur in those reviews to which we will be a willing participant. We want established the areas which the parties will proceed to examine, so that there can be no surprises for either side, and so that the Commission in its monitoring role is fully aware of the starting position of all parties.

We believe that is not unreasonable.

We are not - we are not - seeking that agreement must be reached in all elements of the review, merely that the format, the structure of the review is established as a precondition of gaining the 3%

MR WILLINGHAM: adjustment.

DEPUTY PRESIDENT: Whilst you're interrupted, Mr Willingham, could you tell us who would you see as putting forward, if you like, the suggested agenda? Would you say that the employer might initiate it, or the union should initiate it, or both?

MR WILLINGHAM: Mr Deputy President, I have these fervent and frenzied dreams sometimes that it will be the trade union movement which brings these proposals to the employers. Practice suggests that in fact what will happen in most instances is that the employers will produce a list of items which they require to be included in the review and will then be favoured with a negative or a positive response by the trade unions involved in the review.

Certainly if our experience in the second-tier exercise is anything to go by, that will be the experience we have on this occasion.

Sir, in talking about this establishing of agenda, it may be thought that the procedures that we are proposing could lead to undue delays in the awarding of the 3%. And we concede readily that that is a possibility.

So in order to encourage the adoption of the procedure that we propose, and to minimise delays in employees gaining the 3% increase, we submit that the adjustment (that is the 3% adjustment) should be awarded by no later than the end of October, provided that proper account is taken of those matters detailed at pages 7 and 8 (i) to (iv) of Print H.4000.

PRESIDENT: At what page?

MR WILLINGHAM: Seven and 8.

DEPUTY PRESIDENT: And the further detailed reference?

MR WILLINGHAM: On (i), which is on page 7, Mr Deputy President, and then (ii), (iii) and (iv) on page 8.

PRESIDENT: And that's the one that includes the conduct of employers, isn't it?

MR WILLINGHAM: Indeed it does, Mr President.

It also includes, for the purposes of the record, Mr President (perhaps I was remiss - I should have read it in), the date of operation of increases under the second tier (which will clearly be a matter of concern in some quarters, it would seem); improvements in superannuation and a reduction in hours; the extent of agreement under the award; the nature and extent of industrial action and, as you refer me to it, Mr President, the conduct of the employers.

PRESIDENT: Would you be addressing us on your impression or the Minister's understanding of those four placita?

MR WILLINGHAM: I shall at some later stage, if you wish me to, Mr President.

PRESIDENT: Because I'm sure we would be assisted by anything you can tell us on that because I'm sure we'd all agree that it's possible to put different interpretations on each of those.

MR WILLINGHAM: Perhaps you would care to remind me towards the end of my submission, Mr President.

PRESIDENT: Be assured that I will, Mr Willingham.

MR WILLINGHAM: I was afraid of that.

The second point that we would ask the Full Bench to consider is the second instalment of the increase. That is, the increase of up to a maximum of $10 payable not earlier than 6 months after the date of operation of the 3% adjustment.

The National Wage Case decision at page 6 states that:

> "The Commission will sit again in February 1989 to hear detailed reports on progress and individual award reviews so that it can both monitor the effectiveness of this decision [and there, Mr President, I interpose that I am assuming the AC and AC is referring to its national wage decision] and consider any matters of general principle that might need to be resolved".

We believe that at that time, or perhaps earlier, circumstances may well arise in which there will be a potential need for the Commission to

MR WILLINGHAM: become involved and possibly to arbitrate on one or more elements of any review for which agreement has not been reached.

That is another reason why we feel agenda should be established prior to the awarding of any 3% adjustment.

In our view it is important, if not imperative, both for the satisfactory processing of the review and for any subsequent necessity for arbitration, that all parties know the ground rules right from the start.

One of those ground rules, in our respectful submission, should be that there ought not be an expectation that the $10 increase will be awarded automatically, once 6 months has elapsed from the granting of the 3% adjustment.

We respectfully submit, Mr President, members of the Bench, that before awarding the second increase the Commission should be satisfied that genuine agreement has been achieved under the structural efficiency principle or, at the very least, substantial progress has been made towards accomplishing the objectives of the review.

Irrespective of whether the Commission is persuaded to accept this point of view or not, we still firmly believe that all parties should know from the start what guidelines will apply and what conditions, if any, must be met in respect of gaining the second instalment increase.

In conclusion of this part of our submission, we reiterate that the national wage decision generally, and the structural efficiency principle specifically, recognise the need to encourage greater productivity and efficiency.

In particular, the Full Bench said,

MR WILLINGHAM: at page 5 of Print H.4000:

> "Attention must now be directed towards the more fundamental institutionalised elements that operate to reduce the potential for increased productivity and efficiency."

The Bench also said that:

> "Restructuring will be done primarily by consultation and at minimal cost".

In noting that last quote, we acknowledge the National Wage Full Bench emphasised that the structural efficiency principle is not intended to be applied in a negative, cost cutting or illusory manner to formalise short-term benefits.

Nevertheless, the Tasmanian Government submits that the parties to the new system must continue to pursue the initiatives opened up by the second-tier restructuring and efficiency exercises and maintain the momentum of improving efficiency and productivity wherever possible.

The Tasmanian Government is a willing party to that process and regards its achievement as having industrial, economic and social advantages for our State.

Sir, if I may turn to some of the matters raised by my colleague, Mr Lennon, and indeed by subsequent speakers.

We do not support Mr Lennon's proposed amendments to the wage fixing principles. We believe that the Commission should, in our respectful submission, adopt the National Wage Case decision in toto, with suitable modifications in wording, so that it clearly establishes that they would apply to

MR WILLINGHAM: the State Industrial Commission.

We do agree with Mr Lennon in his definitions of part-heard cases or substantially-heard cases. I think what he offers is a very sensible explanation and modus operandi by which that could be dealt with.

In terms of the second-tier catch-up ... not as Mr Lennon reminds the Bench that it's of concern to the Government in its role as an employer, since most of those matters have now been processed ...

But we would believe quite firmly that those employees who have not yet gained access to the second-tier increase should have preserved a mechanism by which they may do so and that mechanism should quite clearly specify that the principles attached and the prosecution of that increase are identical to those who have already received the adjustment, including, if necessary, access to an Anomalies Conference.

DEPUTY PRESIDENT: One of the aspects you've just touched on, Mr Willingham, in the Australian Commission's decision (I'm sorry, I can't point you to the page) suggests that there might be some delay in between second-tier increases and increase under the new principle. Have you any suggestions to us on that?

MR WILLINGHAM: I can see the quandary that some organisations may be placed in.

I really don't have much of a suggestion for you, Mr Deputy President, other than to say that if the Commission is disposed to adopt the Government's position, which is that all employees would be awarded their 3% no later than the end of October, and if you ensure that the mechanism is there for those who have not got the 4%, or second-tier increase, to pursue it within the same guidelines, as did others, then we believe that that situation should largely take care of itself. But determining the batting order is something the employees will have to do.

DEPUTY PRESIDENT: Yes, fine.

PRESIDENT: In those circumstances if claims for the 4% were successful, the 4% would then be added to the 3%.

MR WILLINGHAM: I think it works out exactly the same whichever way you do it, Mr President. 3% on 4% or 4% on 3%, I think it comes out the same way.

PRESIDENT: Does it?

MR LENNON: If it doesn't, which way can we have it?

MR WILLINGHAM: Whichever comes out lowest probably.

Sir, in respect of matters going to agreement, it is certainly, for the Government's part, not the intention of our submission that those covered by agreements should be precluded from the general thrust of our submission, and our past practice has always been to implement decisions of State Wage Cases in respect of those covered by agreement.

I do take some umbrage with what

MR WILLINGHAM: Mr Lennon said, I think in response to a question from you, Mr President, or a suggestion from you, Mr President, when you said that perhaps the Commission could make a recommendation that agreements of the Commission be varied.

Mr Lennon's response was that was the very least you can do. My response is it is the very most you could do. But having said that, it would be our intention to ensure those covered by agreements are treated in exactly the same way as those covered by awards in which we have an interest.

In relation to comments that fell, I think firstly from Mr Lennon and then covered by subsequent speakers, that the national wage decision should be seen as effectively a pseudo first tier, we disagree with that. It is not our position. I think it is probably not wise to try to categorise by previous systems or current systems those features of the new system but, if it went anywhere, if one was pressed to characterise it, we would say it's about 1-1/2, somewhere between the first and the second tier. But it most certainly is not the first tier and any reading of the decision makes that clear.

PRESIDENT: Well, why then do you suppose did the Bench refer to 1 September as a possible operative date? Surely they weren't so optimistic as to believe that these agreements could be negotiated by that date.

MR WILLINGHAM: No, indeed, and neither is the Tasmanian Government. And that is why we have put some quite short safety net time, that is the end of October, because we recognise that there will be a bit of a rush, there will be a queue develop. We recognise that there is a possibility that some people will be disadvantaged if that queue gets too long and isn't dealt with quickly.

MR WILLINGHAM: But the Federal Commission's decision only says that the decision will not operate prior to 1 September, in contradistinction from the ACTU's claim which sought to operate from 1 July. That is all. It does not and, in my respectful submission, should not be seen as an operative date per se, merely a period in time whereby the Australian Commission has said it will not award increases earlier than.

And it is quite clear, reading the general tenor of the Australian Commission's decision, that it recognises that some increases are going to be paid at a later date than that for a variety of reasons.

PRESIDENT: Does that mean then that the Tasmanian branch of the ACTU is at odds with the other branch?

MR WILLINGHAM: That's a matter, sir, you will have to address to the Tasmanian branch of the ACTU. I have enough difficulties talking for the branch of the Ministry for whom I appear, without answering Mr Lennon's questions.

PRESIDENT: It just seems to me that you're saying that Mr Lennon's interpretation of the Federal decision is not one to which you subscribe, or your Minister subscribes.

MR WILLINGHAM: That is in essence what I'm saying.

PRESIDENT: The ACTU and its constituent members appear to have accepted this Federal decision and are prepared to give it a go. I don't believe that they were overly enamoured with the two-tiered system. I can't see, if I've understood your submissions, that if you're correct there's much difference between the two-tiered system and this, because the 3% is conditional upon certain agreements being entered into.

MR WILLINGHAM: I believe that's a fair comment. It

MR WILLINGHAM: is certainly our view that the structural efficiency principle is a watered-down version of the restructuring and efficiency principle. There are less stringent conditions which may be imposed, I think, by employer organisations but the thrusts are the same. There is no doubt about it and I have no doubt in my own mind that the structural efficiency principle is designed to build upon the base that was established under the old second-tier system. I have no doubt at all about that.

MR WILLINGHAM: It isn't something that's just fallen out of the blue unexpected, to which we've never had anything remotely similar.

PRESIDENT: The only difference being, perhaps ... or one essential difference being that the decision does appear to allow the 3% plus $10 to go to everyone, sooner or later.

MR WILLINGHAM: Yes, under certain conditions.

PRESIDENT: And they are?

MR WILLINGHAM: Oh, the conditions we've already established on pages 7 and 8, which this Commission may take into account when considering the awarding of it.

PRESIDENT: You're going to address us on those?

MR WILLINGHAM: Indeed I shall a little later, Mr President.

PRESIDENT: Yes.

MR WILLINGHAM: Certainly in our view you would have to take cognisance of whether the commitment had been made and, indeed, the form of the commitment. The decision itself is quite specific. It requires unions to formally undertake to cooperate positively etc. etc. Then of course there is the compliance principle on the National Wage Case decision generally.

And there may be other arguments. It may be that ... and I foreshadow this as a real possibility, that there will be items we want included within the perimeters of the review to which an organisation says, `No, that's not on the table', and we say, `Well, sorry, that's our position. We want it.' They say, `No, well, you're not getting it'. Well, our recourse then is to this Commission, at the time, one supposes, that the employee organisation applies for the variation of 3%. And it is at that time that those matters will be put before you.

PRESIDENT: Well, in view of the fundamental differences between the TTLC and other organisations, on the one hand, and you at least being the first speaker for employers on the other, does it boil down to this, Mr Willingham, that this Commission is now being asked to, in effect, interpret Federal decisions?

MR WILLINGHAM: That is precisely what we have asked, though I perhaps draw back slightly from the word `interpret'. We ask for your consideration of the issues we had raised. And we ask you, if it's possible, to give some clarification and guidance to the parties as to how this Commission expects the new decision to be applied and how it expects it to operate, and particularly in relation to the structural efficiency principle.

That is what we've asked. Those are the two matters that we raised with you. We believe there would be inestimable value for the Commission in so doing, so that we do not subsequently have arguments and potential conflict as to what the intent of the decision is. It is good enough for the Tasmanian Government for the Commission to say, `This is the way it's going to be done; this is what we expect, and that's the way it will be observed'.

Someone has to do that and the only appropriate body to do it, Mr President, is this Commission.

Otherwise we'll still be having this marginal differing interpretation between Mr Lennon, the Government, my colleague, Mr Jarman, and perhaps Mr Abey, and it won't be very conducive to getting those .... done, and it certainly won't be very productive, I would suspect, if we're still arguing about the agenda.

PRESIDENT: Do you believe that there has been sufficient material put before the

PRESIDENT: Commission thus far upon which we can make that judgment?

MR WILLINGHAM: I believe that in terms of establishing guidelines, that is quite specifically the agenda which ought to form part of the proceedings before you when employee organisations apply for their 3% variation. Yes, I do. But I'd be delighted to give further elaboration, if you require it.

PRESIDENT: Well, speaking for myself, I would be assisted by anything you or anybody else could put to us on this vexed issue of ... well, there are two issues as far as I'm concerned: the proper understanding of the structural efficiency principle and all its ramifications and how the Commission should take into account those matters to which you've already addressed yourself that appear at the bottom of page 7 and the top of page 8.

MR WILLINGHAM: Yes, sir, I have those on my notes to address you upon.

Sir, I have to, I suppose, come to the stage where matters going to nurses enter our discussions, and it may as well be me who starts it off.

PRESIDENT: Did you say it was you who started it off?

MR WILLINGHAM: Starts this phase of the discussions, Mr President. I doubt very much whether I shall be finishing them.

However, I concur with the submissions put to you by Mr Imlach and Mr Holden in that it seems to me at least sensible that the public sector nurses awards be set aside until such times as the employee organisations seek to come before the Commission in respect of the 3% variation.

I think it's not necessary to exclude them per se at this hearing because I just don't think that's what this

MR WILLINGHAM: hearing is intended to do, although I say that with great respect.

I have assumed that at some point in time the employee organisations must come before the Commission to formally seek the variation of the 3%.

If that's the case, I think those matters are best dealt with at that time. But I must take some exception on behalf of my Minister when ... or to the comments of Mr Imlach who said that his organisation had been excluded from important negotiations in respect of the nurses matters.

My reading of the press of recent times, Mr Imlach's organisation can take almost single-handedly the credit for gaining the increases in career structure in the private sector, and if his influence was anything like as strong in the public sector he's done extremely well and should not be distancing himself from important discussions and negotiations.

PRESIDENT: Are the increases and the manner in which they were obtained something for which anybody could take credit, Mr ...?

MR WILLINGHAM: I don't know what Mr Imlach can take credit for, I'll let him speak for himself.

But can I make the point, sir, so that we may as well have this in the open: whilst it is clear that this Commission may have some concerns in respect of what is happening in the public sector - these are the career structure and rates - can I emphasise before the Commission that the matter of career structure and rates is before an appropriate tribunal and it will be processed and determined under appropriate wage fixing principles.

It is certainly a matter perhaps of lingering concern, and perhaps argument between us, Mr President, as to which jurisdiction that particular matter ought to have been fought out in.

But I emphasise that it is done within an appropriate tribunal, under appropriate guidelines, and within current or future wage fixing principles.

It does not seek and will not seek, as I understand it, to bypass either an appropriate jurisdiction or appropriate wage fixing guidelines.

DEPUTY PRESIDENT: Are you saying, Mr Willingham, that unless there is ratification by an appropriate tribunal, whatever agreement has been entered into, then those agreed rates will not be passed on to nurses?

MR WILLINGHAM: In the public sector, Mr Deputy President?

DEPUTY PRESIDENT: In any sector.

MR WILLINGHAM: I don't purport ... I cannot purport to speak in respect of what has happened or what has occurred or what has been agreed to in the private sector ...

DEPUTY PRESIDENT: But in the public sector ...

MR WILLINGHAM: ... primarily for the reason that I don't know the details, Mr Deputy President.

DEPUTY PRESIDENT: But in the public sector ...?

MR WILLINGHAM: In the public sector the nursing unions, and indeed the Trades and Labor Council who were conductors of the nurses' career structure orchestra, agreed to take an option offered by the Government, which was that ... and their case would be pursued through the Federal Commission and that is where it currently lies.

Now I would have hoped to be able to assure the Bench that that is where the matter will be determined.

Now, if what you say, Mr Deputy President, comes to pass that the matter is not ratified by the Federal Commission, I can only say to you that that is a matter I will have to speak to about at another time, because I have no instructions on what might take place if the matter is not ratified.

DEPUTY PRESIDENT: Well if public documents being ... well, documents being circulated publicly are to be heeded, then the RANF has been promised that it will get its negotiated wage increases regardless of anything.

MR WILLINGHAM: Sir, I haven't seen those documents. I don't dispute for one moment what you're saying. I would not do that. I just haven't seen them.

All I can say is to the very best of my belief it is the intention and

MR WILLINGHAM: express desire and, I believe, the commitment of all parties to that exercise, that the matter be properly and appropriately processed before the Australian Commission within the current or future wage fixing principles.

Now if the matter is not ratified, I suppose we'd have to have a look at what happened in that context. I mean, there are a number of things which may happen in the ratification process, not all of which would bypass an appropriate jurisdiction.

DEPUTY PRESIDENT: Well, at an appropriate interval I may well have produced a piece of paper that you might like to look at and comment upon which goes to that very question.

MR WILLINGHAM: Mr Deputy President, I'd be happy to help in any way I can. I may have to take such questions under advice.

DEPUTY PRESIDENT: Yes.

PRESIDENT: Do I take it from your recent comments that the Minister for Industrial Relations (because you're appearing for him today) does not consider that this Commission is an appropriate jurisdiction to deal with nurses?

MR WILLINGHAM: I don't think any such inference ought to be drawn, neither do I believe any such implication was ever made, Mr President.

PRESIDENT: Well you've indicated that the nurses matter is before an appropriate ...

MR WILLINGHAM: It is before an appropriate tribunal.

PRESIDENT: That must mean that this is an inappropriate tribunal ...

MR WILLINGHAM: No, sir. I'm sorry ...

PRESIDENT: ... because they were previously before this tribunal.

MR WILLINGHAM: That's almost the sort of line I expected to have from my union colleagues.

PRESIDENT: Well they still are before us.

MR WILLINGHAM: No, that's putting words in my mouth that simply weren't there, Mr President. I'm sorry, I have to establish that never has there been an inference that this is an inappropriate tribunal.

Perhaps ...

PRESIDENT: Well you've asked us to ...

MR WILLINGHAM: ... your question, sir ... perhaps your question could be addressed at those parties - employee parties - who were successful in being able to obtain the offer of pursuing the Federal road in this matter as to whether they think it's appropriate, but the State Government, quite clearly, has never implied or imputed that this is an inappropriate tribunal to deal with nurses or any other public sector area of employment, and I would not want you to have any other understanding, Mr President.

PRESIDENT: Well we could be forgiven for thinking otherwise, Mr Willingham.

MR WILLINGHAM: I'll forgive you for just about anything, Mr President ...

PRESIDENT: Yes, except that.

MR WILLINGHAM: ... especially after you interrupted your holidays to come down and be with us.

But ...

PRESIDENT: But all that aside, and greater love hath no man that he interrupted his holiday to cross swords with you,

PRESIDENT: Mr Willingham. But ...

MR WILLINGHAM: I take it as a great honour, Mr President.

PRESIDENT: ... we haven't disposed of this matter yet.

MR WILLINGHAM: No, indeed.

PRESIDENT: You're saying that you don't wish us to make any order affecting nurses at this stage, and I could understand that for the reasons given. You might ... by the same token you might say, `Well don't make any order affecting anyone until they come along separately'.

MR WILLINGHAM: Indeed, sir, that's the general thrust of what we're saying.

PRESIDENT: Yes. But that really isn't what you mean so far as nurses are concerned.

MR WILLINGHAM: When, at the time that any organisation who seeks to vary the nursing awards comes before you in respect of the 3%, that is the time to make those arguments.

It may well be that, in fact, no applications come before the Commission, as otherwise constituted, seeking variation of the nursing awards, either private or public.

PRESIDENT: Would you believe that the way in which the nurses matter was handled was ... or might be described as cavalier?

MR WILLINGHAM: By whom?

PRESIDENT: By those responsible.

MR WILLINGHAM: I think ... no, I would not describe it as cavalier, Mr President. I would describe it as an extraordinarily difficult situation containing a number of complexities for all the parties. All parties, including this tribunal, and I don't shy away from the fact that there has been criticism on some or all of the parties following the outcome.

No, I don't regard it as cavalier. I regard it as people using what they thought at a given point in time was the best way of dealing with a very difficult situation.

Whether with the benefit of hindsight experts, or professed experts, can look it and say, `That was a better way to do it', is always open for those standing on the side, or those who'd like to be a little bit closer to the action.

But no, I would not describe it as cavalier.

PRESIDENT: So it's quite in order, is it? If you get a decision from a Full Bench that you don't like, take it somewhere else.

MR WILLINGHAM: Well of course it's always been an opportunity which could be taken by those who dissent with the decision of any tribunal. But the circumstances in this particular matter were, perhaps, complex enough and difficult enough to cause it to actually occur in that instant.

But that doesn't mean that the

MR WILLINGHAM: behaviour and the responses of those involved was in any way cavalier. Quite the reverse.

DEPUTY PRESIDENT: Not even an 8-day strike in the private sector in an essential industry? That's not cavalier?

MR WILLINGHAM: Well certainly the State Government, and me personally, Mr Deputy President, and I'm sure you, doesn't want to see strikes anywhere, let alone in somewhere like the health industry.

The fact that that strike took place, I don't think anyone takes great comfort from. I don't think anyone would have actually wished it to occur, but the fact of the matter is, it did. It was an industrial dispute of some volatility. It happened. Everyone can look back and say, `Yes, let's do it differently. If we'd done that, or we hadn't done that, something different might have occurred.'

But the fact of the matter is, it did. We didn't have a strike in the public sector, only by the skin of our teeth. Only by the skin of our teeth, by taking responses, which I believe, Mr President, perhaps is including in his reference to cavalier approaches.

But nevertheless that was what was felt was reasonable and appropriate at the time. And that was what was done.

It it's open to criticism, then it's open to criticism. It was done with the best intentions of employer, employees and the system generally.

If fault can then be found with it, so be it.

DEPUTY PRESIDENT: But you're not saying are you, that

DEPUTY PRESIDENT: industrial action involving nurses walking off wards, in any shape or form, can be looked upon sympathetically?

MR WILLINGHAM: Well, I don't think anyone, sir, at any time can give support or condone or have sympathy with industrial action being taken in the form of strike.

MR HOLDEN: The Government did.

MR WILLINGHAM: Mr Holden incorrectly repeats what has been said for far too long in respect to the private sector nursing dispute.

If Mr Holden, by sotto voce, is alluding to the fact that the Government is purported to have supported the strike in the private hospitals area, I would be grateful to Mr Holden, through the Commission, to be able to produce evidence of that assertion.

What the Government did was indicate that it had support and sympathy for the private sector nurses in their pursuit for career structure and wage rates analogous to those which had just then been given or granted ...

DEPUTY PRESIDENT: Whilst they were on strike.

MR WILLINGHAM: ... or agreed. But Mr Deputy President, there's a difference, I suggest, between indicating some sympathy for a cause that is being pursued and then having that translated or transposed, to effectively people coming out and saying the Government is supporting a strike, which was simply not done.

DEPUTY PRESIDENT: Not only were those people on strike, but they were acting in defiance of an order of a properly constituted Commission which was acting pursuant to laws pertaining in this State.

MR WILLINGHAM: That is as I understand it, Mr Deputy

MR WILLINGHAM: President.

DEPUTY PRESIDENT: Thank you.

PRESIDENT: So I take it from your obvious justification of the action of the Government in the nurses matter that it could happen again in relation to any other matter, Mr Willingham? Given similar circumstances?

MR WILLINGHAM: I suppose, Mr President, that it is not for me to make absolute judgments in respect of that. If you'd asked me the same question 2 years ago I would have probably glibly, but genuinely, said no. Time is a great teacher, so is experience. I would say that I would find it difficult to envisage similar circumstances arising again, but I could not, or I would not, preclude that that may happen. It is impossible for me to make such an absolute judgment.

PRESIDENT: So that, I presume, is your response to sub-placitum (iv), of page 7 ... of page 8, rather.

MR WILLINGHAM: Well, no, it's not my response, Mr President, to (iv) on page 8. It isn't what I meant.

What I have said is the Tasmanian Government, sir (and perhaps I may with respect remind the Bench) has persistently and continuously pledged its support for the centralised wage fixation system, and it's my judgment and it's certainly the Government's view, and it can be demonstrated that it has made that commitment stick, that it has kept that undertaking.

MR WILLINGHAM: Sir ... and I just very briefly ... I know time is marching on and you must be getting tired of listening to me.

DEPUTY PRESIDENT: No.

PRESIDENT: No, not at all.

MR WILLINGHAM: It's almost .... a statement rather than a question, Mr Deputy President, but I'm disappointed.

Sir, in terms of wage movement, and I believe it was Mr Lennon who raised it and Mr Vines certainly who supported .... quoted .... The increases which have occurred year by year against the CPI figures, and from my notes I think it started from 1985 and finished somewhere in 1988 at a place yet to be determined, but in just talking about increases, whilst I'm not suggesting that real wages haven't fallen, because I think it's acknowledged that they have, I would hope that Mr Lennon, in drawing a balanced picture to the Commission, would talk about things like superannuation and second-tier increases which don't form part of economic adjustment.

MR LENNON: State taxes going up.

MR WILLINGHAM: Indeed I'm glad Mr Lennon raised that because I would have been very remiss if I didn't remind the Bench and Mr Lennon that the State Government has pledged that in this forthcoming budget there will be no hikes in taxes and charges on individuals .... indicated further an example of the responsibility shown in fiscal management by the State Government. Thank you, Mr Lennon, for that opening.

But can I also talk about the other things ...

COMMISSIONER WATLING: Does that mean they are going to hit Mr Abey's members?

MR WILLINGHAM: Well, it's never an .... to hit

MR WILLINGHAM: anyone, Mr Commissioner, but revenue must be found from somewhere, must it not?

MR LENNON: You've got to build a bigger knapsack before you can put more bricks in it.

MR WILLINGHAM: But in terms of those matters which Mr Lennon did not draw to your attention, I suppose we would also talk about the 38-hour week, which in many cases was a 5% increase; we talk about work-value matters which have been pretty thick on the ground or more thick on the ground than perhaps was envisaged when the principle came in; over-award payments which have been negotiated by Mr Lennon's constituents; increases or creation of new allowances.

So it's a balanced picture that must be drawn. I don't think one can get an idea of real wage movement just by merely adverting to economic adjustments of National Wage Cases and then referencing that to CPI and saying, `Goodness, what a gap there is'.

And dare I say it, in some cases in Mr Vines' area there have even been suggestions as yet unproven of classification ....

Sir, can I finally just go to the two questions that you asked me in relation to item (i) to (iv) on pages 7 and 8 of Print H.4000. I don't know what the National Wage Full Bench had in mind with (i) but you asked me for my view; I'll give it to you.

I would imagine it means that if a reasonable interval has elapsed since the granting of an increase under the second-tier, then there should be no impediment to the 3% structural efficiency increase being granted from an agreed date.

I imagine, as an example, that if a second-tier 4% increase had been

MR WILLINGHAM: awarded on 25 August, then there may be an argument - may be an argument - that there should be some reasonable interval elapsed before the 3% comes down.

It will not, I suspect, be a feature of any argument that I can readily think of in the public sector. I don't pretend to speak for Mr Abey's organisation.

PRESIDENT: Yes, I realise the context in which you're addressing us, Mr Willingham, but I suppose one could then argue ... well, take the Police Award, for example (which I think that was probably the last public sector award to get the 4%) it might be argued by them that they'd waited so long that they had missed out anyway for so long - should they now be deprived of a 3%?

MR WILLINGHAM: Well, I've indicated ...

PRESIDENT: I'm not really putting a case for the Police, I'm just putting the other side of the argument.

MR WILLINGHAM: I understand that, Mr President, but without actually checking the date, I think that that was sometime in June. It may have been late May, I can't recall.

PRESIDENT: I think they were the last.

MR WILLINGHAM: They were certainly the last and as Mr Lennon has reminded the Bench, and I thank him for it, of course the public sector in terms of the second tier is 99% complete although he seemed to have some ongoing complaints about the way we've handled it.

I'll be interested to see what he says about the 73% of the private sector that haven't got it. If they get the sort of battering we did for having given it, Mr Abey's in for a long submission tomorrow.

MR WILLINGHAM: But it's impossible to give a yardstick as to what is a reasonable time. In my judgment, of all those matters that I'm aware in the public sector, we would not be advancing an argument that says that the second-tier increase is too close to the proposed date of the structural efficiency increase.

But I certainly would not preclude an organisation from making that argument dependent upon circumstances. If we go, Mr President, to the 38-hour week matter, there are certainly no matters in the public sector which would concern the Tasmanian Government in respect of that, but there may be elsewhere. I would have to rely upon Mr Abey to indicate that to the Bench.

In terms of superannuation that's slightly different and that's also one of the reasons why the Tasmanian Government, in its primary submissions, said that it didn't believe any employee should wait longer than the end of October for their 3% adjustment under structural efficiency. And as is well known by the Tasmanian Government, Mr President, the Commission can, at any stage, at the instigation of Mr Lennon or any other union, start awarding 1-1/2% of superannuation now and 1-1/2 from 1 January 1989.

DEPUTY PRESIDENT: From now?

MR WILLINGHAM: One and a half per cent, I understand, from now, is it not, Mr Deputy President? Well, from way back but I would assume you wouldn't do it retrospectively.

MR LENNON: Put a date on it, quick, please.

DEPUTY PRESIDENT: I thought you were bringing me up to date with something I didn't know about.

MR WILLINGHAM: Mr Deputy President, as Mr Lennon indicates to you, Cabinet has not yet given us their instructions on that matter. We hope to be in a position to talk to you next Thursday, sir.

COMMISSIONER WATLING: Mr Willingham, have you any submission to put to us as to whether or not there should be some waiting time?

If an organisation has come before the Commission and given offsets for a 4% restructuring and efficiency arrangement, should they wait, or be penalised before they can move into this new system?

MR WILLINGHAM: Again, Mr Commissioner, it is very difficult to define a yardstick which is going to cover all circumstances. I really think that each matter must be dealt with on a case-by-case basis.

COMMISSIONER WATLING: So you really haven't any submission on it?

MR WILLINGHAM: We would have a submission on a case-by-case basis, but I don't think I'm in a position ... I don't think anyone is in a position to establish a yardstick which says, `Well, that applies or that doesn't apply'. I just think you have to look at it in a context of the circumstances.

DEPUTY PRESIDENT: Mr Willingham, I really do apologise for interrupting you and I think you're probably worth at least triple time pay today.

MR WILLINGHAM: I'm glad that's in the transcript, Mr Deputy President.

DEPUTY PRESIDENT: It is in the transcript and I don't retract it.

PRESIDENT: I think it's outside the principles.

DEPUTY PRESIDENT: Well, I didn't think it mattered.

DEPUTY PRESIDENT: One of the key elements of the TTLC submission, supported by others, is that the Commission ought to have the ability to award retrospectivity in appropriate cases. Will you be coming to that?

MR WILLINGHAM: Yes, sir.

DEPUTY PRESIDENT: Thank you.

MR WILLINGHAM: Yes, sir, I shall.

Sir, Mr President asked what our definition of the restructuring principle is ... structural efficiency.

PRESIDENT: Before you go on, is that all you're going to address us on ...

MR WILLINGHAM: I'm sorry?

PRESIDENT: ... on pages 7 and 8?

I was hoping you ...

MR WILLINGHAM: I'm sorry ...

PRESIDENT: ... might say something about the extent of agreement under the award ...

MR WILLINGHAM: Well the extent of ...

PRESIDENT: ... because, frankly, I don't understand it.

MR WILLINGHAM: The extent of agreement under the award, as far as we're concerned, Mr President, is as we have put it to you in our primary submission; that an agenda ought to be clearly established which illustrates the components which the parties have agreed to pursue in the course of the review.

PRESIDENT: You think that's a reasonable conclusion to be drawn from (ii)?

MR WILLINGHAM: It is consistent with the construction that we believe the

MR WILLINGHAM: Commission, with respect, should adopt and the way we believe it can best be expressed, that the extent of the agreement is the extent to which the parties agree to review certain matters during the course of the structural efficiency process.

I don't think anyone would be bold enough to suggest that you must have a guaranteed agreed outcome before the 3% should apply.

PRESIDENT: Yes, I ...

COMMISSIONER WATLING: But you should have an agreed agenda?

MR WILLINGHAM: I believe that it should be clearly defined that matters ... agreed matters are included and what are included as part of the review of the award or awards, yes.

There can then be, Mr Commissioner, no surprises, no subsequent claims of caprice or back-sliding, what have you, which sometimes characterises these sorts of events.

PRESIDENT: It's really quite extraordinary, because the preamble talks about `agreed increases' and then goes on to address the likelihood of the Commission ... Federal Commission, having to arbitrate an operative date.

MR WILLINGHAM: Yes.

PRESIDENT: In that ...

MR WILLINGHAM: My interpretation, Mr President, is that we would say, for instance, to one of our public sector union or unions, `Look these are the things we want included in the review. Do you agree?'. And they say, `Well if we agree, are you going to agree to 3% from a particular date?'. And we say, `Yes', and that is the extent of the agreement the parties come before you with.

MR WILLINGHAM: Now if that sounds simple ... but there are a number of aspects that won't be that easy to reach accommodation on, particularly from the employers' point of view when seeking to include matters within the confines of the review.

The easy part, of course, is the unions saying `Yes, we'll have 3% from 1 September or whenever'.

DEPUTY PRESIDENT: I suppose (ii) is also open to the interpretation, Mr Willingham, when it says that:

> "The extent of agreement under the award will be taken into consideration".

It could also mean the total lack of it by one party if, for instance, an organisation suggests what it believes to be a very fair agenda to become part of further discussions and that agenda is rejected by the other party, then that could be a matter to be taken into consideration in the Commission's deliberations at the time of arbitrating.

MR WILLINGHAM: Indeed, Mr Deputy President, that really is the thrust of our point, that if the parties can't reach agreement ...

DEPUTY PRESIDENT: Regardless of who the parties are.

MR WILLINGHAM: ... regardless of who the parties are, the matter will come before you upon application to the 3% variation. And at that time what we seek is the Commission to ensure that those agendas are established.

And if it means that the Commission must arbitrarily make some determination in respect of agenda items, then so be it.

DEPUTY PRESIDENT: So it really means the extent of agreement or the lack of it.

MR WILLINGHAM: Well the extent of agreement under the award, yes, obviously could be the ... could be written in the converse, yes.

DEPUTY PRESIDENT: Yes.

PRESIDENT: Could it not also be construed to mean that the Commission will take into consideration very liberal agreements?

In other words, where too much weight or perhaps a significant weight has been put upon some structural change and value and agreed upon, and the Commission, in those circumstances ... supposing the Commission felt that perhaps it might have awarded 5% and the parties have agreed upon 15, but can't agree upon operative date, the Commission might, in those circumstances, say, `Well, in regard to the extent of the agreement or the measure of it, a prospective operative date'.

MR WILLINGHAM: That's a possibility.

PRESIDENT: So there are all sorts of options, I suppose.

MR WILLINGHAM: It may be that the date of operation is the only area of disagreement. I concede that. I would think then that if all that we have asked you to adopt is present (that is, agreement on the agenda items so that positions are protected from both perspectives), I would have thought that it was open to you to ratify that with the earliest possible date of operation.

PRESIDENT: It's not easy for this Commission or this Bench to determine these matters in view of the paucity of information as to what was put before the Commission that prompt them to rule in that way.

MR WILLINGHAM: Yes, it's no less easy, sir, for those who have to give effect to it outside of this Commission.

PRESIDENT: Yes.

MR WILLINGHAM: That's one of the reasons, without labouring the point, that we believe these agendas are essential because it is open for differing nuances of construction and interpretation by various parties. I guess it depends which side of the fence you're on, and every man and their dog can have a stab at what they think it means. Mr Lennon said `It's all things to all people', and it often is. And that of itself is a fertile breeding ground for dissension and disagreement.

So what we're suggesting, Mr President, is that the parties put their heads together quickly to identify the parameters that .... bring it before the Commission as quickly as they can. And it's open for either party to put it's perspective, if you like, before the Commission at the time the 3% is varied, so that there won't be any subsequent misunderstandings or misinterpretations. And we really do believe that it's essential that that happens. I don't really think that that needs to be a time-consuming

MR WILLINGHAM: process.

COMMISSIONER WATLING: It would be true to say though that this is not our decision and you're asking us to introduce a system, but you're at the same time asking us to interpret what was in a decision of another tribunal.

Surely if you're putting a submission to us on what the system should be, you should be telling us what you want of the system. It's not us interpreting another decision of another tribunal.

MR WILLINGHAM: Well with respect, Mr Commissioner, we have put to you what we believe the Commission should adopt in those terms and, of course, it is for you to decide whether you will do so.

What we're saying is, whatever the outcome of our submission, whether they fail or whether they succeed, we think that this Commission as constituted should ensure that guidelines are issued in clear terms so that those reading your decision can have no doubts as to what the Commission expects will be followed.

We would hope, sir, that you would adopt our proposal.

COMMISSIONER WATLING: Is there any area of agreement between you and the Trades and Labor Council on what the decision means in this respect?

MR WILLINGHAM: I believe we would not have had the opportunity to discuss it long enough to find that out.

COMMISSIONER WATLING: So if there's disagreement between the parties on what the decision says, why should we accept it?

MR WILLINGHAM: Well that's a question I can't answer.

We have put to you what we believe the decision means and how we think it would best be implemented. I can say no more than that.

MR WILLINGHAM: Sir, can I finally turn to the ... Oh sorry, Mr President, we haven't got down to your conduct of the employers.

PRESIDENT: No.

MR WILLINGHAM: Well I don't know what it means.

PRESIDENT: Could we bounce a few suggestions?

MR WILLINGHAM: I understand conduct of employees, Mr President, because that's easy. They can be sometimes very difficult to understand in some of the things that they do, like going on strike and taking bans, as indeed the radiographers are doing right at this very moment on the very day of a State Wage Case, which is either superb timing by Mr Vines or unfortunate timing. But the conduct of employers - I'm not really sure I understand what that means and I'm certainly not able to indicate to the Bench what my construction of it is.

PRESIDENT: Do you think that learned Deputy President of the Arbitration Commission in the Qantas case understood it?

MR WILLINGHAM: Are we talking about Deputy President Keogh, is it?

COMMISSIONER WATLING: Boulton.

MR WILLINGHAM: I'm sorry, I'm not familiar with the case.

PRESIDENT: He suggested or required Qantas to complete a statutory declaration to the effect that they would not in future breach the guidelines as an employer.

MR WILLINGHAM: I'm sorry, I'm aware of the one you're referring to.

Well, of course, what the learned Deputy President determined is something I'm not sure is relevant here.

PRESIDENT: It must have gone to the conduct of the employer.

MR WILLINGHAM: If the employer, as is often asserted, can be seen to be capriciously frustrating or obstructing matters which are open to the parties within the principles and within the Commission, if that can be really demonstrated, then I suppose that is the sort of thing that the learned national wage bench had in mind when they referred to the conduct of employers.

It may mean in those instances where it is alleged and never proved that employers initiate some sort of industrial action because they've got stockpiles or they want to run down their stores or whatever the case may be, or they just want to take someone on ... I mean we hear those sorts of stories.

I suppose, Mr President, that's what's meant by the conduct of the employers.

I don't know ...

PRESIDENT: Perhaps they enter into pre-emptive deals.

MR WILLINGHAM: I don't know employers that enter into pre-emptive deals, not in the public sector anyway.

PRESIDENT: I wasn't talking of the public sector.

MR WILLINGHAM: Oh good, good, Mr President. Well then it really doesn't apply to me.

PRESIDENT: But you'll never know what I was thinking.

MR WILLINGHAM: I'll let you ... you'll never know what I was thinking either. But perhaps I'd await it with as much interest as you do, Mr President, when you hear the responses that you'll undoubtedly elicit from my colleague, Mr Abey, in respect of

MR WILLINGHAM: those matters. But other than that, sir, if the Commission pleases.

PRESIDENT: Well, you haven't yet addressed us on the structural efficiency.

DEPUTY PRESIDENT: Or retrospectivity.

MR WILLINGHAM: Well the structural efficiency, I thought we'd gone through fairly well, but I'll repeat it.

Mr Deputy President, I apologise. We are totally opposed to any removal of any reference containing a proscription on the Commission for awarding retrospectivity.

In other words, we believe that there should be a proscription on the awarding of retrospectivity.

I say this in the full knowledge that it is open to this Commission under section 37(5) of the Industrial Relations Act to take account of whether it is right and proper to award retrospectivity in any matter.

MR WILLINGHAM: And that is an argument that has been put in this place in the not too distant past.

My view is this, if you pick up the national wage decision and it, in more than one place, proscribes retrospectivity both on an agreed or consensual basis and an arbitrated basis, that it would be quite wrong then to invoke the provisions of the Industrial Relations Act.

The parties are entitled to know that retrospectivity is not available under any circumstances, and those are the guidelines adopted by this Commission and those are the guidelines that will be applied.

There may be, in my view, no circumstances which bypass that.

DEPUTY PRESIDENT: I wasn't going to refer to section 37(5), but you're obviously reading my mind correctly, as usual. But are you seriously suggesting that we can pick up a set of principles which are contrary to the provisions of the Act?

MR WILLINGHAM: I don't believe that they're contrary to the principles of the Act, Mr Deputy President. What it says in section 37(5), I think, is if the Commission believes it is right and proper so to do, given your adoption of the wage fixing principles which will contain the proscription on the awarding of retrospectivity, it could easily be concluded that you would determine individually and collectively that it is not right and proper to award retrospectivity given the fact that you've adopted the principles.

And it is very, very important, Mr Deputy President, that the parties who appear before this Commission know, in unequivocal terms, whether retrospectivity is a possibility or whether it is not.

MR WILLINGHAM: It needs to be established beyond any doubt whatsoever as to whether the discretion under section 37(5) has to be read in conjunction with the wage fixing principles or whether it has to be read disjunctively.

DEPUTY PRESIDENT: Well, I take on board your suggestion that we should address ourselves to the question of retrospectivity.

MR WILLINGHAM: Thank you, Mr Deputy President.

PRESIDENT: You were reluctant to favour us with a lengthy discourse on this new principle, I know, but would you at least go this far and tell us, if you will, if you believe that the first three components set out on page 6 might be regarded as apposite to the public sector awards, say, the general officers or, say, the technical officers awards.

MR WILLINGHAM: Mr President, I'll try. Can I say that the focus, we believe, is most appropriate ... the structural efficiency principle is that which directs attention towards the more fundamental institutionalised elements that operate to reduce the potential for increased productivity and efficiency.

If someone wants the starting position as to what the structural efficiency principle means, that's what we think it means. Break down the barriers towards improved productivity and improved efficiency. That's what we think it means. That's what we think it should focus upon, and there is no equivocation about putting that before you at all.

In answer to your question, whether it is a mechanism by which you can establish skill-related career path, I think it's a mechanism by which you can establish them. I don't know whether it's the mechanism by which you then compensate for the new career path. Does that answer that

MR WILLINGHAM: question?

Sorry, the eliminating impediments to multi-skilling and broadening the range of tasks which a worker may be required to perform, I think, to some extent ... multi-skilling was the feature of some of the offsets that we gained in the second tier and there's clearly some more to come. And multi-skilling can be achieved in a number of different ways. Broad-banding springs to mind.

PRESIDENT: Would this be double dipping then?

MR WILLINGHAM: One would have to be careful not to double dip. I take Mr Vines' point. There are some areas which can naturally link from the second-tier exercises. There are some which may overlap, there are some which will be new. I think the parties can work that out satisfactorily. I'm sure they will have to, Mr President, otherwise you'll knock it back.

PRESIDENT: How could we create appropriate relativities between categories of workers within, say, the general officers or technical officers awards?

MR WILLINGHAM: Difficult question.

DEPUTY PRESIDENT: Or hospitals?

MR WILLINGHAM: Even more difficult question and less of an answer to that one, Mr Deputy President.

PRESIDENT: Then what is your considered view on those three components? That they are apposite, or ...

MR WILLINGHAM: The first two, I think, are apposite, yes. I have some difficulty with the third .... point, because I don't understand it.

PRESIDENT: You would understand the fifth, I imagine.

MR WILLINGHAM: Yes, I do understand it. I'm looking forward to the test case that comes up on it.

PRESIDENT: Well, that might be dealt with by an appropriate tribunal anyway.

MR WILLINGHAM: May I say again, if the Commission pleases.

PRESIDENT: Thank you, Mr Willingham.

Mr Jarman?

MR JARMAN: Thank you, sir. I appreciate the fact that you've just recently dislocated yourself from holiday mode, so I'll be as brief as I possibly can be with my submission.

MR LENNON: You're not going to read the Federal one then?

MR JARMAN: I beg your pardon?

MR LENNON: You're not going to read that Federal submission then?

MR JARMAN: No, I think ... Well, perhaps I should read it.

May it please the Commission, we support the position put by Mr Willingham on behalf of the Minister for Industrial Relations, particularly those parts of the submission dealing with the adoption of the Federal Commission's national wage case decision and the attendant principles.

MR JARMAN: In terms of cost, the 3% wage increase to employees covered by public sector awards in this jurisdiction will be in the order of $20 million per annum.

We note that the Federal Commission on page 6 of its decision highlights a number of areas for consideration in award restructure negotiations. Those same areas have been built into the structural efficiency principle.

Whilst these areas for consideration provide a guide to parties, they are neither definitive or explicit.

We submit that unions should not consider the 3% adjustment as an automatic entitlement once they have given their commitments to the system. This Commission, if it adopts the National Wage Case decision, will be monitoring progress of award reviews. The Commission should be given some idea as to what it is it will be monitoring.

We further submit that once the parties are agreed on the grounds for review, they should appear before this Commission to make a definitive statement on an award-by-award basis, as to the nature of restructuring perceived.

And if I could direct the Commission's attention to page 6, paragraph 2 - and if I may quote that into transcript - the Federal Commission says:

> "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

MR JARMAN: both management and workers. We will require any union seeking an award variation to give effect to the increases allowable under this decision to commit itself formally to a review of that award to give proper effect to this principle. Such a review will be monitored and assisted as necessary by the Commission."

And we believe we are entitled to read into that particular statement the Federal Commission's intention that the parties give it some idea as to what will be on the table for restructuring purposes.

Once those statements have been made, it may then be appropriate to put to this Commission submissions on the implementation of the increase. And we take note of Mr Willingham's submission regarding his statement on operative date.

May it please the Commission, we believe it appropriate at these proceedings to put forward our views on the nature of negotiations which may arise due to the Commission's adoption of the Federal decision. If we learnt anything at all from the second-tier operation, we learned that cooperation is a two-way street.

We respectfully submit that on this occasion we will be waiting for employee organisations to put forward items on structural efficiency. As employers we will also contribute. However, we will not do as we did on many occasions in the second-tier round - carry the burden of providing the issues for discussion.

We believe that there is an onus and an obligation on unions to contribute to the restructuring exercise.

In recent times much has been made by unions and employers of the terms,

MR JARMAN: `award restructure', `improved productivity and efficiency', `multi-skilling' etc. They are the industrial relations buzz words of the '80s. Certain key words, such as `multi-skilling', `training' and `retraining' are thrown around with gay abandon.

We believe it appropriate at this proceeding to advise this Commission and the unions present on our understanding and position with respect to the term `multi-skilling'. We make this submission in the belief that the subject of multi-skilling will be one which is given a real working over in the forthcoming negotiations.

First let us say that there are some employee organisations which would have us believe that multi-skilling is the panacea for all employer problems associated with productivity and efficiency. We have a somewhat different view concerning the value of multi-skilling.

Multi-skilling for us has two distinct meanings. In the first instance an employer, when designing or redesigning a job (and we understand that that is still the province of the employer) may consider that the employee filling that job should be multi-functional.

On the basis of need, the employer would undertake to train or retrain that employee. This concept of multi-skilling rests on decisions made by the employer.

The other facet of multi-skilling is where people are encouraged to perform work they are capable of doing through the removal of artificial demarcation barriers.

We submit that this is the form of multi-skilling to which the Federal Commission refers on page 6, paragraph 2, of its decision. If I

MR JARMAN: may quote from the decision into transcript:

> "The new principle will provide incentive and scope within the wage fixation system for parties to examine their awards with a view to eliminating impediments to multi-skilling and broadening the range of tasks which a worker may be required to perform".

MR JARMAN: Our negotiations in the second-tier operation revealed to us that these artificial barriers exist and in some cases are jealously guarded.

This is the facet of multi-skilling which is of concern to us. It will be one of those restructuring and efficiency grounds heading our agenda.

We are concerned that this type of impediment which has bred and fostered restrictive work practices be removed.

If the Commission pleases.

PRESIDENT: Mr Jarman, thank you. I don't detect, on my reading of this decision, very much having been written about public-type employees. Were you able to discover much in the decision that really addressed the situation?

MR JARMAN: No, I think that's fair comment, sir. I was interested to hear your comment of some little while ago where you said that there was a paucity of information available as to restructuring and what it means. I can assure you, sir, that if you read the Federal National Wage Case transcript that you will be no further advanced, because there certainly wasn't a lot of information adduced by the Commonwealth, the ACTU, or the major employers, as to what is meant by award restructure.

PRESIDENT: Whilst I don't imply that these proceedings are concerned only with public sector employees - not for one moment - throughout the decision reference is made to enterprise and to industry. It doesn't really help us a great deal so far as the awards with which some of us are more familiar that apply to the public sector are concerned.

How one might apply these criteria, whichever interpretation be accepted ...

MR JARMAN: Well I think that will become ...

PRESIDENT: ... in order to make it work?

MR JARMAN: Yes, well I understand what you're saying. I think that will become clearer when the parties have had their discussions and determined the parameters for negotiation. The Federal Commission itself, says on page 7:

> "As far as the method in implementation is concerned, the unions favour industry-by-industry, award-by-award, or employer-by-employer negotiations".

Now in the public sector we have a preference as indicated in my submission to award-by-award negotiation. If the Commission pleases.

DEPUTY PRESIDENT: Mr Willingham ...

PRESIDENT: Thank you, Mr Jarman.

DEPUTY PRESIDENT: Oh, I'm sorry Mr Jarman. You started off by quoting from the Print at page 6, where you said in relation to the structural efficiency principle, and the quote was:

> "It is not intended that this principle will be applied in a negative cost-cutting manner, or to formalise illusory short-term benefits".

Would you interpret that as meaning that that would rule out agenda items being put forward which would include things such as penalty rates or other prime award conditions in ... as has occurred of course in some instances in relation to the second tier ... or it was suggested that they should be on the agenda. Do you think that that quote is meant to rule out that sort of approach?

MR JARMAN: I don't think that they're

MR JARMAN: precluded. I'm mindful of what Mr Lennon had to say earlier in the day, that prima facie there may be a suggestion that award restructure deals with classification scales only. However, there is nothing in this decision which precludes the parties from discussing structural changes to existing conditions or provisions in award.

DEPUTY PRESIDENT: Thank you.

MR JARMAN: If the Commission pleases.

PRESIDENT: Mr Abey.

Is it convenient to address us tonight, Mr Abey?

MR ABEY: Well it doesn't appear, unless the Bench was able to faithfully promise that they wouldn't ask one question.

DEPUTY PRESIDENT: I cannot give that commitment.

PRESIDENT: And I cannot tell a lie, Mr Abey.

MR ABEY: I don't think it's really feasible to finish tonight bearing in mind there's other employer groups in the right of reply, and if that is the case I'd prefer to adjourn until tomorrow.

PRESIDENT: Mr Lennon?

MR LENNON: Mr President, in ... I've no objection to what Mr Abey's just proposed, except could I suggest an earlier start tomorrow than 10.30? Would that be in accord with ...

PRESIDENT: Well, say 10 o'clock.

MR LENNON: Well some of us get to work earlier than that, Mr President.

PRESIDENT: And some of us don't.

MR VINES: He's on leave.

MR LENNON: I was thinking more like 9.30

MR LENNON: actually.

PRESIDENT: Now then, now then. What, you're not going to go all day are you?

MR LENNON: No, I was just trying to ensure it does finish tomorrow, that's all.

MR ABEY: Well it'll certainly finish tomorrow as far as I'm concerned.

PRESIDENT: Well if it doesn't it will have to be concluded at Coolan Beach.

MR LENNON: Sounds like you're on the same plane I am.

PRESIDENT: Well perhaps you can give us some indication as to how long you might be, Mr Abey.

MR ABEY: Well I can answer that with some accuracy, if you could answer the question I address to you.

PRESIDENT: And I said I cannot tell a lie.

MR ABEY: No. Well you know, my submission with a straight run would take about 20 minutes.

COMMISSIONER WATLING: And double that.

PRESIDENT: Well thank you for that, Mr Abey. Mr Lennon, in view of Mr Abey's comment, and making due allowance for the fact that there may be the odd question - 10 o'clock?

MR LENNON: Nine thirty?

PRESIDENT: Well, we're not going to make it 9.45.

MR LENNON: Okay, 10 o'clock's fine.

HEARING ADJOURNED