

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. Nos. 432 and 435 of 1986

IN THE MATTER OF applications by the Tasmanian Public Service Association and the Tasmanian Trades and Labor Council to vary all public sector awards, and to vary all public and private sector awards and agreements respectively

And

T.No. 440 of 1986

IN THE MATTER OF an application by the Association of Professional Engineers Australia (Tasmanian Branch) to vary the Professional Engineers Award and the North-West Regional Water Authority Employees Award

re national wage 2.3% increase in salaries, wages and allowances

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT
COMMISSIONER GOZZI

HOBART, 9 July 1986

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: Appearances, thank you.

MR LENNON: If it pleases the Commission, **PAUL LENNON**, Secretary, Trades and Labor Council representing that organization and trade unions generally.

PRESIDENT: Thank you, Mr Lennon.

MR EVANS: **A.H. EVANS** appearing for the Tasmanian Public Service Association.

PRESIDENT: Thank you, Mr Evans.

MR JARMAN: May it please the Commission, I appear for the Minister for Public Administration in respect of those awards administered in the State Service. I also appear on behalf of the North West Regional Water Authority, the Southern Regional Cemetary Trust, the Tasmanian State Institute of Technology, the Governor of Tasmania, the President of the Legislative Council, the Speaker of the House of Assembly and the Commissioner for Police. **JARMAN, M.**

PRESIDENT: Thank you, Mr Jarman. Mr Jarman, are you aware that the State Institute of Technology has sent a telegram to this Commission indicating its attitude to these applications?

MR JARMAN: It's nice to be instructed at this late stage, Mr President. Perhaps you could inform me at a later date as to what the instructions are.

PRESIDENT: Thank you. Mr Willingham?

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

PRESIDENT: Thank you, Mr Willingham.

MR ABEY: If the Commission pleases, I appear with **MR T. EDWARDS** for the Tasmanian Chamber of Industries, the Meat and Allied Trades Federation of Australia, the Tasmanian Sawmillers Industrial Association and the

MR ABEY: Electrolytic Zinc Company of Australasia Limited, **ABEY, T.J.**

PRESIDENT: Thank you, Mr Abey.

MR HENDERSON: If the Commission pleases, I appear for the Association of Professional Engineers of Australia, **N.G. HENDERSON.**

PRESIDENT: Thank you, Mr Henderson.

MR O'BRIEN: If the Commission pleases, I appear for the Federated Miscellaneous Workers' Union, **K. O'BRIEN.**

PRESIDENT: Thank you, Mr O'Brien.

MR HANLON: **HANLON, D.P.** I appear for the Australian Workers' Union.

PRESIDENT: Thank you, Mr Hanlon.

MR TAYLOR: **TAYLOR, T.J.** I appear for the Australian Mines and Metals Association.

PRESIDENT: Thank you, Mr Taylor.

MR RICE: If the Commission pleases, **RICE, K.J.** I appear for the Tasmanian Farmers and Graziers Employers Association.

PRESIDENT: Thank you, Mr Rice.

MR McDERMOTT: If the Commission pleases, **G. McDERMOTT,** Police Association of Tasmania.

PRESIDENT: Thank you, Mr McDermott.

MR SENATOR: If the Commission pleases, **GORDON SENATOR** representing the Salaried Medical Practitioners Society.

PRESIDENT: Thank you, Doctor Senator.

MR TARGETT: If the Commission pleases, **TARGETT, P.E.** I appear for the Shop Distributive and Allied Employees' Association and the United Sales Representatives and Commercial Travellers' Guild of Australia and the Australian Hairdressers,

MR TARGETT: Wigmakers and Hairworkers Employees' Federation.

PRESIDENT: Thank you, Mr Targett.

MR NIELSEN: If the Commission pleases, my name is **NIELSEN, P.L.** I appear for the Ambulance Employees' Association of Tasmania, the Bakery Employees and Salesmen's Federation of Australia and the Federated Millers and Mill Employees' Association.

PRESIDENT: Thank you, Mr Nielsen.

MR DOWD: If the Commission pleases, my name is **DOWD, M.** I appear on behalf of the Amalgamated Society of Carpenters and Joiners.

PRESIDENT: Thank you, Mr Dowd.

MR FRY: If the Commission pleases, I appear on behalf of the Federated Clerks' Union of Australia, **FRY, D.J.**

PRESIDENT: Thank you, Mr Fry.

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

PRESIDENT: Thank you, Mr Blackburn.

MR FORSTER: **J. FORSTER**, appearing on behalf of the Australasian Society of Engineers Federal Council.

PRESIDENT: Thank you, Mr Forster.

MR HARRIS: If the Commission pleases, **HARRIS, G.**, appearing for the Tasmanian Prison Officers Association.

PRESIDENT: Thank you, Mr Harris.

MS CROTTY: **GAIL CROTTY**, appearing on behalf of the Tasmanian Teachers' Federation.

PRESIDENT: Thank you, Ms Crotty.

MR GRANT: If the Commission pleases, **I.G.M. GRANT.** I appear on behalf of the

MR GRANT: Royal Australian Nursing Federation,
Tasmanian Branch.

PRESIDENT: Thank you, Mr Grant.

MR ELLIOTT: **DAVID ELLIOTT** representing the
Association of Tasmanian Further
Education Staff.

PRESIDENT: Thank you, Mr Elliott.

MR BUTLER: If the Commission pleases, **M.G.
BUTLER**, appearing for the Federated
Liquor and Allied Industries
Employees' Union of Australia,
Tasmanian Branch.

PRESIDENT: Thank you, Mr Butler.

MR SMITH: If the Commission pleases, **SMITH,
R.J.** I appear for the Master
Builders' Association of Tasmania.

PRESIDENT: Thank you, Mr Smith.

MR CURRIE: If the Commission pleases, **CURRIE,
N.A.**, appearing for the B.W.I.U. and
the Plasterers' Union.

PRESIDENT: Thank you, Mr Currie.

MR BACON: I appear on behalf of the Australian
Building Construction Employees' and
Builders Labourers' Federation,
Tasmanian Branch, **BACON, J.**

PRESIDENT: Thank you, Mr Bacon.

MR BENNETT: **GREG BENNETT** appearing for The
Hospital Employees' Federation of
Australia, Tasmanian Branches No. 1
and 2.

PRESIDENT: Thank you, Mr Bennett.

MR GLISSON: **GLISSON, J.**, appearing on behalf of
the Federated Ironworkers'
Association.

PRESIDENT: Thank you, Mr Glisson.

MR SWALLOW: If the Commission pleases, **SWALLOW,
J.**, appearing for the A.M.I.E.U.

PRESIDENT: Thank you, Mr Swallow.

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APPEARANCES

MS SMYTHE: **SMYTHE, D,** appearing for the Australian Theatrical Employees' Association.

PRESIDENT: Thank you.

MR HEVEY: If the Commission pleases, **REX HEVEY** appearing for the Plumbers and Gasfitters Union.

PRESIDENT: Thank you, Mr Hevey.

MR THOMPSON: If the Commission pleases, **THOMPSON, W.B.** I appear on behalf of the Operative Painters and Decorators' Union of Australia.

PRESIDENT: Thank you, Mr Thompson.

MR GILL: If the Commission pleases, **JACK GILL.** I appear on behalf of the Federated Furnishing Trades Society of Australasia, Tasmanian Branch.

PRESIDENT: Thank you, Mr Gill.

MR ADAMS: **ADAMS, G.D.** I appear on behalf of the Amalgamated Metal Workers' Union along with **MR M. PECK.**

PRESIDENT: Thank you, Mr Adams.

MR KENNY: If the Commission pleases, **KENNY, A.C,** appearing on behalf of the Electrical Trades Union of Australia, Tasmanian Branch.

PRESIDENT: Thank you, Mr Kenny.

MR STRICKLAND: If the Commission pleases, **STRICKLAND, D.** I appear on behalf of the Federated Storemen and Packers' Union.

PRESIDENT: Thank you, Mr Strickland. Mr Lennon?

MR LENNON: Thank you, Mr President. It is good to see it has brought the troops along in full force this morning.

If I could quickly take the Commission to our claim.

Our claim as lodged is to vary all private sector awards, all public

MR LENNON:

sector awards and all agreements by 2.3%, to increase all appropriate allowances by 2.3% and to vary the Principles in line with the decision of the Full Bench of the Conciliation and Arbitration Commission.

With respect to the Plumbers Award and the Building Trades Award, the appropriate parties will be making submissions on those 2 particular awards.

DEPUTY PRESIDENT:

Did you say the Plumbers and the ...?

MR LENNON:

The Plumbers Award and the Building Trades Award.

DEPUTY PRESIDENT:

Thank you.

MR LENNON:

The relevant parties will be making statements affecting those awards at the appropriate time.

Mr President, in opening I would like to remind the Bench of the wording of Principle 1, and it states:

"Subject to Principle 2, the Commission will adjust its award wages and salaries every six months in relation to the last two quarterly movements of the eight-capitals CPI unless it is persuaded to the contrary by those seeking to oppose the adjustment."

That was the existing Principle of the Full Bench of the Conciliation and Arbitration Commission, nationally, which has been carried on through this Commission. The onus therefore is clear; it is on those who may seek to oppose this claim to do so. The onus, in my view, is certainly not on us to show cause why the Commission should grant it, but rather it is on those seeking to oppose it to show cause why it should not be granted.

Our claim seeks a flow-on of the

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DEPUTY PRESIDENT - LENNON

MR LENNON:

Conciliation and Arbitration Commission's decision, both in terms of the 2.3% increase which is to take account of the September and December quarter C.P.I. movements, and to vary the Principles in line with the Conciliation and Arbitration Commission's decision.

At this stage, Mr President, I would like to present an exhibit on the Principles. I have a number of copies here.

PRESIDENT:

While that is being distributed, Mr Lennon, we have decided that any exhibits tendered by employee organizations will carry the prefix 'U'; those by employer organizations will carry the prefix 'E' and those by Government bodies, the prefix 'G', for ease of identification.

This will be Exhibit U.1.

MR LENNON:

Mr President, there are a couple of small alterations that I would like to make to this exhibit.

First of all, the proposed Principle 3, Superannuation - I would like to make an alteration to point (iv) - at present it says:

"... are consistent with the Commission's Principles and determinations by the Full Bench referred to in our decision."

I would like to alter that to read:

"... are consistent with the Commission's Principles and determinations of the Full Bench of the Conciliation and Arbitration Commission decision, Print No. G3600."

And in Principle 8, delete the word 'authority' and replace it with 'Commission'.

Mr President, the submission that I have just put forward on the

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MR LENNON:

Principles will bring the Principles in line with the recent decision of the Full Bench of the Conciliation and Arbitration Commission.

It is fair to say that some of those Principles do not exactly enhance our position, nevertheless, we are of the view that Tasmania ought to follow directly in line with respect to the Principles and the centralized wage fixation system with that which applies federally and in other States and, for that reason, the unions have agreed that we should make application to vary the Principles in line with the Principles that have now been adopted by the Full Bench of the Conciliation and Arbitration Commission.

Not all the Principles have been varied but, nevertheless, we have reprinted them all, for the purpose of this hearing, for uniformity.

With respect specifically to Principle 3 on superannuation, the trade union movement is fully aware of course that that is a matter which is precluded under the Act within which we operate and we have sought discussions with the Tasmanian Government with a view to them agreeing to amend the Act so as to include superannuation as an industrial matter. The Commission will appreciate of course that Principle 3 is inherent within the decision and would be, so far as we are concerned at least, the most important alteration that the Commission has made to the Principles.

Following the discussions that I had with the Government, they today gave me a letter indicating that the Government is prepared to amend the Act to make superannuation an industrial matter and I would like to tender the letter to the Commission as an exhibit.

PRESIDENT:

It'll be Exhibit U.2.

MR LENNON:

Mr President, for the benefit of those who may not get a copy of the letter, I will read it into the transcript. It's addressed to myself, the Secretary of the Tasmanian Trades and Labor Council, dated 8 July 1986 and reads as follows:

"I refer to your recent discussions with the Premier and myself and wish to confirm that the Government will introduce an amendment to the Industrial Relations Act which will permit the Industrial Commission to deal with those matters provided for in the superannuation principle of the Conciliation and Arbitration Commission.

I expect that this amendment will be presented to the Parliament in the forthcoming Budget Session.

Yours sincerely,

PETER RAE
MINISTER FOR INDUSTRIAL
RELATIONS"

Clearly, that sets out that the Government is prepared to proceed with its verbal undertaking given to us earlier this week, that it will amend the Act.

The problem arises, of course, is if the Commission is agreeable to include the Principles as now adopted by the Federal Conciliation and Arbitration Commission, how we adopt an approach to putting in Principle 3, considering that it isn't at the moment an industrial matter.

From the part of the trade union movement, I can say that we would be prepared to accept a position where the Commission could be disposed to

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MR LENNON:

put a prospective operative date on that Principle to say, for example, that it should come into operation on the same day that the amendment is made in Parliament and is given assent in Parliament on the clear understanding that the Government will stand by its now written commitment that it will introduce the amendment in the forthcoming Budget Session, which I understand will be in August.

If the Government is not prepared to stand by that commitment, then of course we would want to state quite clearly that we would need to reconsider our position in light of that.

There isn't any indication, in my view, that the Government wouldn't be prepared to stand by that commitment and allow superannuation to be dealt with in an orderly process under the auspices of this Commission.

In the meantime, we believe that the Commission would be able to convene and conciliate parties under section 29, if in fact disputes were to occur around the question of superannuation.

We accept and acknowledge that the Commission would not be in a position to make any decision with respect to such a dispute, but certainly the Commission would be in a position, in our view, to use its good offices to attempt to bring the parties together in the interests of industrial relations.

PRESIDENT:

Would that affect any decision we might make regarding the preamble to the Principles, Mr Lennon, which does, you would be aware, also include some reference to superannuation?

MR LENNON:

Yes, I would agree with you that the changes in the preamble to include superannuation would need to be

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PRESIDENT - LENNON

MR LENNON:

considered, but the heart of the superannuation package, if you like, within the decision is contained in Principle 3.

PRESIDENT:

Yes, thank you.

MR LENNON:

Certainly, so far as the trade union movement is concerned, any commitments that may well be sought from us by yourselves in the event that you are persuaded to adopt the Principles, any commitment would need to be given on the understanding by us that superannuation is in fact to be dealt with within Tasmania in no different a manner to that which it will be dealt with through Federal awards, and therefore, we will need some clear understanding and statement from the Commission as to how it will adopt its position with respect to the superannuation question.

We understand the problems that the Commission is faced with and to that end we have sought from our part to get some clear understandings and undertakings from the Government, which we think are now there, and will enable the Commission to adopt a sensible approach with respect to that aspect.

Mr President, unless the Commission requires, I don't believe that it's necessary to go through the Principles individually. I think that everyone is clearly aware, and I understand that there is no disagreement amongst the major employer organizations to the adoption of the Principles, nor for that matter to the flow-on of the 2.3 percent. And I'll leave that for them to say, but unless the Commission requires it, then I will leave that exhibit stand.

I believe that the area that needed clarification was surrounding Principle 3 and the rest of the changes are fairly self-explanatory.

PRESIDENT:

Without going through them, Mr Lennon, I take it they are a direct lift from G.3600, amended only to have regard for the fact that this is a State tribunal?

MR LENNON:

That's correct, Mr President. That certainly was our intention. Any departure from that would be a typographical error, and I've checked it and as far as I'm aware there isn't any changes.

The only area perhaps that we probably need to go through is the question of Principle 1, 'National Wage Adjustments'.

If you look in the exhibit, (b) in particular, you can see that we have got there:

"The Commission expects that decisions on national wage adjustments will be made prior to 1 January and 1 July to enable adjustments to operate from those dates."

Of course this Commission, as a matter of course, does not sit until after the decision of the Federal Conciliation and Arbitration Commission has been made.

For our part, we have made it very clear on a national level that we expect that these decisions will be handed down on the dates that the Commission has now advised.

It should be made very clear to people that the Federal Commission has now structured in a delay in its national wage cases and we have estimated that to be the equivalent of around about 1.4 percent, and therefore, we would need a very clear understanding that for the Commission's part (and which has been your approach in the past, we're well aware of that), that the decisions within this Commission will follow a course similar to that in the national Commission.

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PRESIDENT - LENNON

MR LENNON:

That is a Principle that they have put in. I understand that that may not be possible to approach here because if they delay, then of course you're in no position to do anything different.

It may be appropriate for the Commission to consider that and another paragraph perhaps which could say something like this: 'For this purpose, the Commission will sit as soon as practicable following the relevant national wage decision of the Conciliation and Arbitration Commission'.

PRESIDENT:

You don't think that 1(b) simply determines in advance that the operative date of any favourable decision will be those indicated?

MR LENNON:

I do, but involved in that as well, I think, is a clear understanding that the Commission needs to set its timetable (the Federal Commission that is) to ensure that it's completed its case and handed its decision down prior to 1 January. Now as we all know, if the Commission was to hand its decision down nationally, for example, on 24 December, then that creates some problems for us within Tasmania, given the time of year that it is and given that it may not be possible to get the money amounts into employees' wage packets, prior to the Christmas break.

So the timetable becomes quite tight for this Commission. And what I'm saying to you is that as we are aware you've done in the past, that the Commission would use its good offices to ensure that where practicable, any case for a flow-on here within a time frame which would allow us not to depart too much from what is happening nationally, in terms of the time period it takes to get the actual wage increase, if it's to be granted in the employees' wage packets and bearing in mind that the January one is likely to be dealt

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PRESIDENT - LENNON

MR LENNON:

with on the doorstep of the Christmas break.

Now, it may be appropriate ... Certainly, as it's written at the moment, it's exactly in line with the national decision, but it may be appropriate for the Commission to add that extra paragraph.

We're well aware of the employers' position, Mr President. They don't like these matters delayed, which then brings into question the necessity for back payment et cetera, and for our part, we concur with them, and we think that these hearings ought to take place as soon as practicable, and therefore, it may be appropriate to incorporate that within the Principles.

Mr President, the main aspect for us to address ourselves to today, I believe, is the public interest and that aspect which the Commission is bound to consider when taking into consideration national wage cases.

What is essentially at stake here, of course, is the maintenance of a centralized approach to wage fixation. There's been a lot of discussion in the media in recent times about that approach, and certainly we take a very strong view that that is what is essentially at stake here.

Failure to grant the 2.3 percent will almost certainly lead to a spate of claims in industry by unions, with a high probability that wage increases may be higher in some areas than 2.3 percent.

The centralized system has provided stability in the economy and in the industrial relations system.

It is an essential element of the prices and incomes accord, which has seen, in the last couple of years, a number of positive improvements within the Australian economy.

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LENNON

MR LENNON:

For example, economic growth is the fastest in the O.E.C.D. countries.

Our most consistent period of sustained high level of growth since the 1970's has come in the last couple of years - the fastest employment growth in the world. We are the only O.E.C.D. country to have a further fall in unemployment.

The quality of employment growth also stands out amongst our major trading partners.

More than two-thirds of the job growth has been in full-time jobs and almost 90 percent of jobs now derive from the private sector.

Fifty-seven percent of new jobs have gone to women and real unit labour costs have been reduced to levels below that pertaining in the 60's.

Our profitability, as a proportion of G.D.P., has been raised from 11 percent to 15.1/2 percent and industrial disputation is at its lowest level for 18 years.

With about half the work-force in Tasmania covered by Federal awards, it would be extremely inequitous not to grant the increase to employees covered by State awards.

Costs have risen substantially in the last 12 months. In fact, a recent consumer survey showed that Tasmanians paid some of the highest prices for consumer goods in Australia.

Tasmania cannot be dealt with in isolation with the rest of Australia, and in coming to its decision, the Full Bench considered in detail the economy within Australia.

On the question of employment, whilst our rate remains unacceptably high, employees cannot be expected to bear a disproportionate share of the restraint and, through the A.C.T.U.,

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LENNON

MR LENNON:

we've already agreed to a 2 percent discount for this particular case.

Therefore we believe that we've totally accepted our responsibility in restraining labour costs.

The responsibility, in our view, now rests with the employers to begin a concerted campaign to restrain the price levels for the everyday necessities of life.

It is clear and it is on the record that within the last 12 months, costs have risen by just over 9 percent, whilst employees have only been compensated for wage rises of the order of 3.8 percent.

I can only reiterate, the failure to grant the 2.3 percent at this time by this Commission will only lead, in my view, to the end of a centralized approach to wage fixation within this State, which will put us out of step with the other States and the Commonwealth.

I therefore urge the Commission to accede to our claim.

Thank you.

PRESIDENT:

Thank you, Mr Lennon.

PRESIDENT:

Mr Evans.

MR EVANS:

Mr President, I would endorse and support the arguments put forward by my friend, Mr Lennon, and adopt them as my own.

I would just add that it is now some 8 months since the award rates were adjusted for those awards which we have made application for variations. The Commission, in doing so, established on that occasion - as it had done on previous occasions - Principles to which it required adherence.

My organization and its members have complied with those Principles and we believe that that in itself demonstrates the value to the community, and certainly adds weight to the argument 'in the public interest'. On this occasion the Commission should grant the application for the 2.3% wage flow on, and adopt those Principles which have been tabled by Mr Lennon.

In the event that the Commission so does, then my organization will be in a position to give commitments to a continuation of adherence to those Principles in order that there is an orderly system of wage fixation within this jurisdiction of this Industrial Commission.

I'd urge the Commission to rapidly apply the benefits that are now applying to other workers within this community and ensure that there is no cause for any further disquiet or distress from those who are employed by the State.

PRESIDENT:

Thank you, Mr Evans.

Mr Evans, just a point of clarity. Are you happy with Mr Lennon's observation regarding the superannuation question?

MR EVANS:

Yes, I just didn't get a chance to talk to him, but maybe in Principle

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PRESIDENT - EVANS

MR EVANS: 3 (iv) ... If I could just have one moment?

PRESIDENT: Yes.

...

MR EVANS: If the Commission pleases, in Principle 1 (b) the words now read :

"The Commission expects that decisions on national wage adjustments will be made prior to 1 January ..."

And then goes on to read ... It's just a slight change of wording might satisfy any potential technical difficulties, and it could read :

"The Commision expects decisions on national wage adjustments will be made to enable adjustments to operate from 1 January and 1 July ..."

That just might solve a little problem.

PRESIDENT: To enable adjustments to operate from - instead of those dates - from 1 January and 1 July.

MR EVANS: 1 January. Yes, delete the words 'prior to 1 January and 1 July', and the wording, as I said, is then going to read :

"The Commission expects that decisions on national wage adjustments will be made to enable adjustments to operate from 1 January and 1 July ..."

PRESIDENT: Yes, thank you.

MR EVANS: That ensures we don't get the cart before the horse or can't find the cart for the horse.

PRESIDENT: Thank you, Mr Evans.

Mr Henderson?

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PRESIDENT - EVANS

MR HENDERSON:

Thank you, Mr President.

My Association endorses totally the submissions made by Mr Evans and Mr Lennon for the T.T.L.C. I would urge the Commission to adopt the Principles espoused by the Full Bench of the Conciliation and Arbitration Commission in toto, with the various amendments, as suggested by the earlier speakers.

And from the point of view of Professional Engineers, would urge the Commission to award an increase of 2.3% to enable those covered by Tasmanian awards to keep pace, not only with their colleagues covered by Federal awards in Tasmania, but also with the Australian industry scene as a whole, particular in respect of professional engineering.

PRESIDENT:

Yes. Thank you, Mr Henderson.

Mr Hanlon?

MR HANLON:

Hanlon, D.P., for the Australian Workers' Union.

The Australian Workers' Union supports the submissions of the Tasmanian Trades and Labor Council.

We also wish to make some comment arising out of the application that we've been advised that Tasmanian Farmers' and Graziers' wish to make on the basis of incapacity to pay. And we do so. And we'd like to draw your attention to the previous application that they have made, which was in T.265, T.266 of 1985.

In doing so, their arguments were set out then on page 10 of that decision. They sought then, on the grounds of incapacity, using the existing provisions of the Act.

At page 18 your decision, their arguments on that occasion were rejected. And we would again be seeking for the Commission to reject the foreshadowed application, and in

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MR HANLON:

doing so, would just like to make reference to a statement of the Full Bench - the Tasmanian Full Bench - at page 16, where and I quote :

"We point out that for the Principles to fulfill their aims and objectives, the public interest requires a commitment from all. No one group, unions, governments or employers can act in isolation from other groups if the present system is to work equitably and fairly."

We say that that Principle was applied and the Australian Workers' Union has abided by its undertaking. And on the last occasion the Full Bench, at page 5, gave an opportunity to every employer to argue 3 points. And they were, I quote :

"We have considered the submissions concerning the present status of the principles and now make the following observations. The Commission has not itself abandoned the Principles, has not been asked to do so by any other employer or employee organization, since those organizations gave their individual commitments in 1983.

Indeed, the applications now before us are quite clearly being pursued in accordance with those Principles that if there are any organizations now present who are of a contrary view we invite those organizations to present their views as part of these proceedings."

Paragraph 3 :

"The question of the Principles of wage determination to apply in the future will therefore be

MR HANLON:

dealt with in our decision on these applications."

Well the Commission went one step further on this occasion, and it introduced an amendment to the award to cover (to paraphrase the Commission's words):

"To avoid any expiry period the commitment existed for 6 months and until the next decision of this Commission."

And that's contained in page 14 - and the exact words :

"We have also decided rather than run the risk of having a further situation arise, where in 6 months time the Principles have again technically expired without being amended or replaced, they shall be extended by 6 months from 6 October, 1985 or until varied or replaced."

Now we see that the Australian Workers' Union and the Commission accepted the view that the Principles would apply to all. We have kept our undertaking.

The delay since April, where that has worked to the advantage of the employers in the sense that that delay has meant there has not been an increase in that period, for the Tasmanian Farmers' and Graziers now to foreshadow an application on the basis of incapacity to pay, when on the last occasion it was raised by the Bench in questioning that incapacity had to be based on specifics - specific employers and specific employees - rather than a blanket application to have certain classifications from an award ...

And that's a critical point from the Australian Workers' point of view, is that we are not looking at a

MR HANLON:

particular employer seeking to avoid a national wage increase. The application on that occasion sought to remove a specific employee from the impact of that classification. And that is not something which this Bench upheld then.

We would argue that if the application is contained in that form on this occasion it should again be excluded.

It's important in looking at the Full Bench decision, on which the Trades and Labor Council application is made - and that is reported in G.3600 - where the National Farmers' Federation was represented in those proceedings - and the Tasmanian Farmers' and Graziers' Association is the Tasmanian Branch of that organization - where at page 2 of their decision, where the arguments were put by the National Farmers Federation as to the centralized system.

In the last paragraph on page 2, where they were summarizing the argument of the National Farmers, the Full Bench (quoting) had this to say :

"The National Farmers Federation said that it did not accept that a structured centralised wage fixation system was the most desirable and effective system and it indicated support for industry and enterprise level arrangements. However, the NFF directed its submissions primarily to the national focus despite its prediction that the national approach is not appropriate. It said, 'It is the outcome that matters to us, not the way the outcome is achieved.'"

MR HANLON:

We would say, as having had that case put, they now have a decision in regard to that matter and the outcome is, that a centralized approach will continue. There will not be a sectional approach.

And one can only assume by that direct quotation that, if that is to be the outcome, then they will accept it. We do not believe that it is open then for them then come in these proceedings and mount a sectional argument, because in this section, in the Australian Conciliation and Arbitration Commission's argument, they do deal with the alternatives to the centralized approach in some detail.

It's not my intention to quote those to the Commission, because they are there for it to peruse and no doubt have made themselves familiar.

But at page 4 they state (at the top of page 4) :

"We also based it on the decision of the Commonwealth, supported generally by those at the National Economic Summit, to adopt a prices and incomes policy approach to economic management currently operating. As to the latter, the centralised system is a foundational feature of government economic policy which allows the adoption and implementation of supporting policies directed towards income restraint."

In reference to the Farmers' Federation, they are also part of the National Economic Summit. They're also part of a number of mechanisms which have been put in place designed to take care of particular farming concerns.

One of them is the control of milk

MR HANLON:

prices in every State by statutory bodies. Again, tribunals that regulate their industry will assess their financial circumstances in regard to all matters.

The results are the same consideration of the price of wheat in Australia, which is in excess of the price earned by farmers elsewhere. The same goes for sugar and rice.

There were considerations in regard to a fuel rebate for farmers.

Now we say, that is a similar opportunity that applied to the general population where there was a discounting with regard to Medicare, which is the following quotation in the Full Bench decision. And they say :

"The reduction in real wages resulting from Medicare effect on the CPI was an important feature of the '83 wage fixation package. Further possibilities of wage restraint are afforded by a trade-off of taxation and social welfare benefits."

Again, that's a penalty that members of the Australian Workers' Union have endured since 1983 as part of the benefits of the Medicare package.

That has been given. We are now wearing that. It's not something to which the farmers can raise now and say, 'Well let's start afresh upon. Let's introduce a new element.', because that is something which we've experienced the discount.

The Full Bench goes on :

These types of measures can only operate in the context of a centralised system based on Wage Fixing Principles to be applied generally and consistently."

MR HANLON:

Now the decision of this Bench was that it should apply to all. A national decision is the centralized system should continue.

The only outstanding matter then is to what extent there should be an exception. It seems to me there is a misunderstanding by the Farmers' Federation, as to the way in which this jurisdiction works and the way the federal jurisdiction works.

The concept nationally is that it is a package. The arguments put in the longest running national wage case on this occasion, were on the Australian economy as a whole, with every employer organization of any significance putting a case. And their summary at page 6, sets out that - in the last paragraph, prior to the beginning of the section on economy.

And we say, having had the Australian economy examined there is a statutory charge on this Commission, in accordance with section 35, which it discharges in all matters that come - in section 36 - which it discharges in all matters that come before it. And that's to have regard to public interest and the likely effect on the level of employment and on the Tasmanian economy.

Now the Tasmanian economy and the level of employment form part of both the national government strategy, it also forms part of the submissions that were put to the Full Bench.

That then means; what avenue is now open to pick up the new guideline, which is set out in the decision at page 48, the section I want to refer to, under the capacity to pay. And that's Principle 12, the new Principle that's been inserted, which in the context of the national wage case - page 49 - the Full Bench had this to say :

MR HANLON:

"In the structured centralised system we have adopted, the onus should rightly be on those who seek to rely on incapacity and we so decide."

At page 50, they go on :

"Accordingly, the following Principle will be included :

Any respondent or group of respondents to an award may apply to reduce and/or postpone the application for a national wage increase or any other increase in labour costs determined under the Principles on the ground of very serious or extreme economic adversity. The merit of such application shall be determined in the light of the particular circumstances of each case and any material relating thereto shall be rigorously tested."

The Federal system is made up of separate award applications resting on the basis of ambit. That's not the situation in this tribunal. The National Farmers' Federation has taken every opportunity to exploit that in regard to the Australian Workers' Union, both about our ambit applying in the Pastoral Award and in seeking delays on the basis of economic capacity for movements in previous Pastoral Award applications.

MR HANLON:

So that we have had delays of 9 months over the \$14 which was part of the 1983 acceptance of the centralized guidelines, in other words a catch-up for those who hadn't received it.

There was a further 4-month delay in 1985 for the 3.8 while that same argument was run and the likely circumstance that again that effort will be taken.

We say, the Australian Workers' Union, who covers members from the oil industry through to the rural, that if we are part of the centralized system then we are entitled to the benefits of it, because the capacity of some ends of our industry are far in excess of the capacities of Australian economy as a whole and for the good of the public interest, we are and have given commitments to that centralized system.

There is no argument that we could extract more out of such areas as Bass Strait. The fact that we accept the C.P.I. increases, then those other sectors of the economy who receive benefits through the taxation system, or Government policy, it should not be open to them to come to use a system that they are capable of under the Federal system and then say to you, 'Well, look, the definition of economic incapacity using the award system is something you should adopt in this tribunal', because this tribunal under its Act, section 35, has a mechanism for general reviews and a Full Bench is required to (and it has a statutory obligation as a Full Bench) only deal with certain matters.

In other words, things like hours, general wage increases and movements applying in the Commonwealth sector will apply to all ... in fact in terms of applying to Tasmanian employees, and that is subsection (7) of section 35.

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HANLON

MR HANLON:

That application and the forum which is on this occasion, we say there cannot be an application for a delay to a specific award. The case has to be put in this forum for all of those parties who are party to this application and, as a result, they have to be prepared to put their case - they have to state which employer employs labour, under which award and that employer does not have the capacity.

It isn't something like in a Federal system where they can wait until the award comes along. This is an application where a decision is made to vary all awards unless there is a case put not to and in the current circumstances, while the Guidelines are being abided by and the undertaking has a time that runs until the award is amended, then they have to be ready to put this case.

I just draw the attention of the Commission to what that really means in a common rule industry.

To pick on the dairy industry: It isn't enough to exclude the dairy hand on behalf of one particular farmer from one part of the State, because the dairy industry is made up of suppliers to that industry; it is also made up of the transportation system that collects the milk from the gates and that is covered by a Federal award in this State. It is also made up of the processors of milk and that is covered by the Dairymens Award and, in turn, there are other employees covered by the Dairymens Award who are covered by general common rule awards, such as tradesmen.

I think those illustrations are enough to say if it is an industry that is affected then is that the case that is being argued, or is it that one individual, a member of the Australian Workers' Union, will bear the sacrifice of being excluded from the central wage system?

MR HANLON:

We say the obligations under section 35 are that this is the review and this is the forum in which the case has to be put and the National Farmers' Federation, through its Tasmanian Branch, has to be in a position to proceed today or what in effect it is seeking to do is to seek an adjournment to the case and then further delay what has already been an extensive delay on behalf of the majority of workers covered by this tribunal.

PRESIDENT:

Mr Hanlon, you appear to have been responding to an argument that has not yet been put but, that aside, perhaps you might wish to comment on an observation made by the National Wage Bench in April 1984. I don't imagine you would have Print F5000 with you, so I will read the relevant extract on page 8 of that print.

They were discussing this very question that you have now raised with us:

"In view of the detailed material presented to us on the economic circumstances of the rural and mining industries, it should be understood that this being a national wage case, such material is only relevant insofar as it throws light on the overall state of the economy.

Economic incapacity in relation to particular industries is a matter for consideration in relation to particular award adjustments. We note in this connection the following in the decision of 23 September, 1983:

"While we would not debar argument being advanced on economic incapacity, we would emphasize not only the long-established principle of wage

PRESIDENT:

fixation that those seeking to argue incapacity to pay must present a strong case, but also that the fundamental basis of a centralized system is uniformity and consistency of treatment.

In particular, in cases involving adjustment of rates in line with national wage decisions the Commission should not refuse an increase except in extreme circumstances."

It seemed to me, Mr Hanlon, that the Commission in that matter, and they repeat that particular extract in a later decision, was envisaging arguments of this kind being presented at the time individual awards covering specific industries might be being considered.

MR HANLON:

I think that's correct. They do make that comment. They also make a comment in the current decision where they refer to the 1970 Engineering Oil Industry Case where the capacity to pay argument was mounted by the union movement for an increase in addition in that industry.

They made mention that even though they didn't accept the principle of increased capacity, that in no way inhibited the right of any employer to argue incapacity. That is contained at page 49 of the current decision.

They then went on to say:

"We should add that in the Engineering Oil Industry Case the Commission decided that its rejection of the profitable capacity as a valid ground for wage increase did not in any way affect the right of an employer or an industry to plead incapacity to meet a claim."

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PRESIDENT - HANLON

MR HANLON:

Now, the difference being of course is that there isn't any ... the difference between now and then, in terms of the employer, is that there is no difference - there has never been a restraint on any individual employer to lodge an application to argue that wages in regard to their particular business should be less than the norm. But we all know that that particular employer would then have to stand up to a searching inquiry.

That isn't really what the employers are seeking to do. They are seeking to use an industry approach on the basis of delaying the wage increase.

Now, because there is a difference in the function of the two tribunals, then the Full Bench can in no way inhibit an argument in each separate application that comes before it in the Federal jurisdiction.

All it is doing, and I think it makes that clear in the same section, where it makes some mention of ambit ... because, unlike this Commission, they can't make a common decision applying to all. Every party has to be represented and only those parties can appear, whereas the application in which the national wage case is mounted, and they are contained in page 1 of the print, it was limited to only 4 specific industries, and they have set down the principles which will be applied by other members of the Commission, they cannot take away a statutory right of anyone to argue anything when any individual application comes forward.

That's not the case in this tribunal. This tribunal provides 2 sections. It provides an application by the Trades and Labor Council or its equivalent employer organization and then the right under 35 (9) (b) "... and any other organization that, in the opinion of the Full Bench, has a sufficient interest in the matter ..."

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MR HANLON:

Now, nowhere does it make a provision for a deferment for one award. It requires an argument to be put and one can end up with a different decision in regard to a particular award as made by the Full Bench, but not a separate hearing. This is either a hearing to review in accordance with 7 or in accordance with the applications of the Tasmanian Trades and Labor Council which, in effect, are one and the same.

We say that the argument put forward by the Full Bench - I think the words they used were that they wanted to 'illustrate that there was flexibility in a centralized system'.

Well, the premise of the Tasmanian Act is that there is centralized decision making on certain matters, depending on who makes the application, how many awards it covers and the subject matter. That is a very important principle. It is a principle that applies in State jurisdictions and does not apply in the Federal one. The Federal one has adopted a single award making decision to establish principles but then they are applied in particular regard to the circumstances. That is not the situation that is applied under our statutory obligations.

PRESIDENT:

Then how should we understand that submission when looked at in the context of section 35 (8), which says:

"An order under subsection (7) by a Full Bench may be subject to such conditions as the Full Bench considers appropriate and are as specified in the order."

MR HANLON:

Well that supports my argument in that this Full Bench can put limits in a particular order and it can distinguish one order from another, but the previous application was for

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MR HANLON:

another hearing in another form,
specifically about one award.

I am saying that that argument is not
open to the Tasmanian Farmers and
Graziers.