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## TRANSCRIPT OF PROCEEDINGS

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O/N 092220/8584

### TASMANIAN INDUSTRIAL COMMISSION

#### FULL BENCH

**PRESIDENT LEARY  
DEPUTY PRESIDENT WATLING  
COMMISSIONER ABEY**

**T No 10230 of 2002**

**T No 10288 of 2002**

**T No 10289 of 2002**

#### **STATE WAGE CASE 2002**

**APPLICATIONS PURSUANT TO THE PROVISIONS OF  
SECTION 23(1) OF THE INDUSTRIAL RELATIONS ACT 1984  
BY THE TASMANIAN TRADES AND LABOR COUNCIL**

**RE: (i) increase all award rates and existing allowances relating to work or conditions, in private sector awards of the Tasmanian Industrial Commission, from a common operative date of, on and from the beginning of the first full pay period to commence on or after 1 August 2002, in accordance with the decision of the Australian Industrial Relations Commission of May 2002, contained in Print PR002002 - Safety Net Review - Wages, (ii) to provide for a minimum wage that is payable to adults without regard to the work performed of \$431.40 per week and (iii) to the extent necessary to effect these changes, amend the Principles of the Commission**

**RE: increasing the meal allowance to reflect consumer price index movements in the category of meals out and take away (Reference ABS 6401.0) for the period of June 2001 to June 2002**

**RE: T No 5985 of 1995, T8737 of 1999 and Print PR918422 of the Full Bench of the Australian Industrial Relations Commission to vary the Supported Wage System clauses in awards of the Commission by increasing the minimum amount payable to employees engaged under the system from \$51 per week to \$56 per week**

**HOBART**

**9.30 AM, FRIDAY, 5 JULY 2002**

**HEARING COMMENCED**

**[10.00am]**

PN1

MS L. FITZGERALD: I appear for the Tasmanian Trades and Labor Council

PN2

MR P. TULLGREN: I appear for the Australian Liquor Hospitality Miscellaneous Workers Union in relation to all matters.

PN3

MR P. GRIFFIN: I appear on behalf of the Shop Distributors and Allied Employees Association, Tasmanian Branch.

PN4

MR T. KLEYN: I appear on behalf of the Health Services Union of Australia, Tasmanian No 1 Branch.

PN5

MR I. PATERSON: I appear on behalf of the Australian Municipal Administrative Clerical and Services Union.

PN6

MR M. WATSON: I appear on behalf of the Tasmanian Chamber of Commerce and Industry, the Tasmanian Farmers and Graziers Employers Association Inc, the Australian Retailers Association Tasmanian Division, and the Victorian Automobile Chamber of Commerce, and with me is MR N. BEHRENS.

PN7

MR T. PEARCE: I seek leave to intervene on behalf of the Minister for Industrial Relations.

PN8

THE PRESIDENT: All right. Thank you. Ms Fitzgerald?

PN9

MS FITZGERALD: Thank you very much and good morning. Sorry, Mr Pearce is - because he is going to be much, much briefer than I am he is actually going to commence.

PN10

THE PRESIDENT: Good. Well, we will hear from Mr Pearce then?

PN11

MR PEARCE: Thank you, Deputy President. I spoke at private proceedings with both Ms Fitzgerald and Mr Watson and they have kindly allowed me to, subject to leave of the Commission, to go first because of the state of the government.

PN12

THE PRESIDENT: Yes. And that is?

PN13

MR TULLGREN: We all look forward to this explanation, I think, your Honour.

PN14

MR PEARCE: Because of the imminent election, Deputy President

PN15

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PN16

THE PRESIDENT: We will grant you leave. I don't think there is any opposition to that.

PN17

MR PEARCE: --- from the outset I wish to make it clear on behalf of the government that it intends to and will respect the conventions which attached to caretaker government. Accordingly we will refrain from articulating any particular position relating to the application of the Trades and Labor Council, which is the focus of these proceedings. However, it would take the opportunity to inform the Bench and the parties of the position adopted by the incumbent government in the most recent safety net review of wages proceedings before the Full Bench of the Australian Commission. That position is of course a matter of fact and on the public record.

PN18

In those proceedings the Labor states of Tasmania, New South Wales, Victoria, Queensland and Western Australia joined together in the presentation of a combined submission. Central to that submission was support for the granting of the ACTU claim in full, predicated upon expectations of a relatively favourable economic outlook. In the alternative joint Labor states sought the granting of the maximum wage increase which was consistent with the evidence to ensure the maintenance of a genuine safety net for the low paid. In its 2 May decision the Australia Commission determined inter alia an \$18 per week increase to the minimum wages safety net.

PN19

Members of the bench absent a substantive submission from the statutory intervener in these proceedings it is content to make brief submissions under the current wage fixing principles and the underpinning statute relevant to the claim of the TTLC. Principle 4 pronounces existing wages and conditions of the Commission's awards to constitute the safety net underpinning work place bargaining. The principle also contemplates the review and adjustment from time to time to the safety net to ensure its relevance. In our submission it cannot be gainsaid that the application of the Trades and Labor Council is anything other than any furtherance of that object.

PN20

The Commission, upon satisfying itself as to the public interest considerations of section 36, has the discretionary power to act to grant that which is sought by the applicant pursuant to section 35(7) and (8). Finally, in accordance with section 20, the Commission, in exercising its jurisdiction under the Act, is mandated, amongst other things, to act according to equity, to do such things to effect conciliation, and importantly to settle claims by agreement between the parties.

On the latter point, the Commission would be cognisant of the level of agreement which permeated the State wage cases in recent years, notably '96, '97, '98, 2000 and 2001. If it please the Commission.

PN21

THE PRESIDENT: Thank you, Mr Pearce. Ms Fitzgerald?

PN22

MS FITZGERALD: Thank you, your Honour. President and members of the bench, the application lodged by the Trades and Labor Council seeks, as has been stated, to increase all award rates, and existing allowances, relating to work or conditions in private sector awards of the Commission from a common operative date of on and from the beginning of the first full pay period to commence on or after 1 August 2002 in accordance with the decision of the Australian Industrial Relations Commission of May 2002, contained in print PR002002 Safety Net Review Wages. And two, to provide for a minimum wage that is payable to adults without regard to work performed, of \$431.40 and to the extent necessary to effect these changes to amend the principles of the Commission.

PN23

I also subsequently made application to vary the supported wage clauses in awards to increase the minimum amount payable to employees engaged under that system for a trial period from \$51 to \$56 per week T10289 of 2002, and also to increase the meal allowance to reflect the consumer price index movements in the category of meals out and take away for the period June 2001 to June 2002.

PN24

In terms of my submission, what I intend to do is as briefly as possible, but also to satisfy the requirements of the Full Bench, to outline the ACTUs living wage claim and briefly the responses to it, to deal with the matters considered by the Full Bench of the AIRC to deal with their submission on the ACTU claim, to deal with the Federal minimum wage and its application in this jurisdiction, matters concerning the Federal Statement of Principles, why the Tasmanian Industrial Commission should flow on the decision, and then briefly the supported wage system application.

PN25

And lastly the meal allowance increase application, which will be dealt with by Mr Paterson. I have handed up a set of exhibits which deal with the matters that I will refer to, or the documents that I will refer to, and the first document is the actual decision of the Federal Commission.

PN26

THE PRESIDENT: Thank you. What if I mark the whole of the exhibits as exhibit A1 - - -

PN27

MS FITZGERALD: Good idea. Thank you.

PN28

THE PRESIDENT: - - - and then we can just refer to the individual parts as we go through.

## EXHIBIT #A1 EXHIBITS TENDERED BY THE TTLC

PN29

MS FITZGERALD: Thank you. Though regarding the ACTU living wage claim, the Australian Council of Unions sought a \$25 weekly increase in all award rates of pay with a commensurate increase in allowances, and that is on page 1 - page 8, paragraph 1. The responses to the ACTU claim commence on page 8 at paragraph 2:

PN30

*Employer organisations or associations represented all opposed the ACTUs wage claim and mostly proposed instead a \$10 per week increase in the Federal Award minimum wage, increasing the wage from \$413.40 to \$423.40 per week, with no increase in award wages above this level.*

PN31

An unregistered association representing restaurateurs and caterers, the Restaurant and Catering Australia, submitted that only 50 per cent of any increase should be applied to the employees of restaurateurs and caterers and that is at paragraph 9. The Australian Catholic Commission for Employment Relations submitted that the Commission should consider the position of the low paid as the over-riding factor, supported the continued use of flat dollar increases and suggested a tiered scale of flat dollar increases, with the greater increases at the lower end of award rates are paid, particularly to employees below the C10 trades person's rate in the Metal Engineering and Associated Industries Award, and that is at paragraph 12.

PN32

The Australian Government opposed the ACTUs claim and argued for a \$10 per week increase to award rates of pay up to and including the trades person's rate. All State and Territory governments, as has been indicated by Mr Pearce, supported the ACTUs claim. With regard to considerations of the Federal Commission, in determining the ACTUs claim the Federal Commission was required to consider economic factors, the needs of the low paid, and living standards generally. With regard to economic factors, these included the current economic conditions, including indicators of recent past economic activity, and the immediate economic outlook, the estimates of the cost of the ACTU claim, and the likely economic impact of the claim. The Commission said, at page 11, paragraph 19 that:

PN33

*The submissions generally indicated that Australia's economic performance had improved, was strong in relation to other developed economies, and that the immediate economic outlook was positive.*

PN34

With respect to differential performance between industry sectors within the Australian economy, the Commission stated at paragraph 60, page 27 that:

PN35

*The information provided confirmed some diversity of economic conditions between and within sectors.*

PN36

The Commission concluded that based on the materials before it, page 33, paragraph 73:

PN37

*The present outlook for the Australian economy was generally positive. The treasury outlook and the recent private sector surveys suggested the continuation of economic growth, which recommenced in mid-2001, strengthening in 2002/2003. Improved labour market outcomes are expected to continue with employment growth positive but moderate at around 1 per cent over the coming year, with the unemployment rate forecast to remain steady. Inflation expected to remain within the Reserve Bank of Australia's target range of 2 to 3 per cent. The immediate outlook of private investment is for continued growth, strengthening into 2002/2003.*

PN38

With regard to the cost of the ACTU claim, the Commission noted, page 36, paragraph 83 that:

PN39

*The aggregate addition to wages growth resulting from a given level of safety net adjustments had declined over time. Commonwealth estimates provided after the present hearing at the request of the Commission showed a net addition to aggregate wages growth of a \$12 increase in the order of .29 percentage points. The Commission reported that the declining addition to aggregate wages costs reflected two factors. First award wages had grown, and second there had been a continuing decline in the proportion of the work force reliant on safety net awards, because of the spread of bargaining. And this is most evident from the longer term with the data from the May 2000 survey of employee earnings and hours, showing that award reliance has declined from 67.6 per cent in May 1990 to 23.2 per cent in May 2000.*

PN40

The Commonwealth and Employer Associations at page 38, paragraph 87 submitted that:

PN41

*Any estimate of the direct cost of the ACTU claim understates the total cost because of the indirect effects resulting from the flow on of the safety net increase to employees not directly entitled to them. The Commonwealth submitted that, notwithstanding the availability of absorption, many employers pay safety net increases to employees earning in excess of award rates of pay.*

PN42

*The Commission decided that the survey results relief upon by employer organisations, both ACCI and the Retail Motor Industry -*

PN43

and this is at page 38, paragraphs 88 and 89 -

PN44

*provided no conclusive evidence about the number of employees who might benefit from the flow on of safety net increases. Further that the survey results may reflect the effect of labour shortages on wage rates.*

PN45

The Commission further stated at page 40, paragraph 96:

PN46

*The Commonwealth analysis of agreements does not provide evidence of significant flow on of safety net increases to employees subject to enterprises agreements.*

PN47

The Commission concluded, page 41, paragraph 98:

PN48

*The material before us supports the conclusion that whilst there is likely to be some indirect costs associated with the safety net adjustment, it is limited.*

PN49

With regard to the likely economic effects of the safety net adjustment the Commission stated at paragraph 102, page 42:

PN50

*It was not persuaded that the \$15 adjustment awarded in the May 2000 decision resulted in the slower growth recorded in the last half of 2000. More that the 2001 increases materially affected growth in employment in the second half of 2001 and in to 2002.*

PN51

Further at paragraph 103 they stated:

PN52

*We are conscious that the minimum employer superannuation contribution required by legislation is to rise from 8 per cent to 9 per cent on 1 July 2002. The impact on growth in aggregate wages costs is substantially less than 1 per cent, given that some employees already enjoy superannuation contributions of this level, and the application of the charge to ordinary time earnings. The increase in superannuation is a factor we have taken into account in deciding the present applications.*

PN53

The Commission also stated, page 42, paragraph 104 that:

PN54

*A number of the parties made submissions about the impact of the safety net adjustment on productivity growth, and noted there is no direct evidence of the effect of safety net increase or bargaining increases on productivity.*

*There is no evidence to support the contentions that safety net adjustments are an impediment to productivity improvement within firms paying them, and that productivity improvement will be necessarily greater in firms paying bargained wage increases. There is, however, material which suggests that sectors characterised by high award reliance, such as the wholesale and retail sector, and the hospitality sector, have contributed to the improved productivity growth of the past decade. The strong productivity growth enjoyed over recent years does not suggest to us that safety net increases awarded since 1997 have been detrimental to aggregate productivity growth. In our view the safety net adjustments awarded will not constrain productivity growth.*

PN55

The Commission reported at paragraph 105:

PN56

*It is required by legislation to have regard to, amongst other things, the desirability of obtaining a high level of employment.*

PN57

And concluded at paragraph 108 that:

PN58

*Whilst real wage growth can adversely affect aggregate employment growth, the extent of such effect will depend upon the prevailing economic circumstances and the extent of the real wage movement, and that the limited edition to aggregate wages growth associated with our decision will not have a significant real wages effect.*

PN59

With regard to sectoral considerations being taken into account in determining the level of safety net adjustments to be awarded the Commission indicated at paragraph 122 on page 48:

PN60

*That the economic incapacity principle provides a mechanism for considering any departure sought from properly established safety net adjustments in that it recognises that the impact on employment at the enterprise level of the increase in labour costs is a significant factor to be taken into account in assessing the merit of any application under that principle.*

PN61

Further:

PN62

*That the longer term picture emerging from data for employment by industry shows employment increasing faster than for all industries in the award reliant industries of accommodation cafes and restaurants and that retail trade over the period November 95 to November 2001 with the trend accentuated since late 1996 -*

PN63

and that is at paragraph 125 -

PN64

*And that whilst casual observation does not permit firm conclusions to be drawn the data suggests that the past safety net adjustments have not significantly impacted upon employment growth in those sectors.*

PN65

The Commission concluded at paragraph 126:

PN66

*In our view the Australian economy can accommodate further reasonable improvements in the safety net minimum wages of the level we determine in this decision.*

PN67

As I said, they are required to take account of the needs of the low paid by virtue of the objects of the Act. Part 6 of the Act, section 88A, subsection 88B(2) and the public interest, subsection 90(b). The Commission in its decision reported page 50, paragraph 130:

PN68

*As in previous cases the ACTU relied on statements from employees in a range of occupations to demonstrate the difficulties those employees had in affording basic necessities -*

PN69

and two of the witness statements relied upon were in fact provided by Tasmanian workers. The Commission found:

PN70

*That it was apparent that all the witnesses struggled to make ends meet, that a significant proportion of their expenditure is on necessities and that unexpected expenditures are difficult to finance and that there are a number of things which the witnesses went without. For example, regular holidays, social outings, replacing household appliances, new clothes and insurance -*

PN71

and that is at paragraph 131 on page 50. At page 51, paragraph 133 in addition to the witness statements the ACTU also relied upon an ABS article entitled Household Income, Living Standards and Financial Stress which analysed data from the ABS household expenditure survey 1998 to 1999 and which found a distinct correlation between the level of income and the level of financial stress indicated. The Commission concluded at paragraph 139 page 52:

PN72

*The material before us also supported the findings that earnings inequality has increased over the period 1990 to 2000. However, since 1999 [sic] real earnings have risen for all parts of the earnings distribution though the size of the increase in real earnings is greater for workers at higher points of the distribution of earnings than for workers at lower points. In terms of*

*income, which is a broader concept than earnings as it includes income support payments and other sources of non-market earnings, inequality has increased over the period 1988 to 1989, to 1998-1999 and there has been no significant change in income inequality since 1994-1995.*

PN73

The Commission noted at page 53 paragraph 144 that:

PN74

*It appears that there is a general agreement amongst the major parties that minimum award wages and the social wage are complementary and inter-related mechanisms for addressing the needs of the low paid.*

PN75

And while the Commission noted that the tax transfer system can provide more targeted assistance this is not to suggest that safety net increases do not assist in meeting the needs of the low paid and while we accept that significant adjustments in the social safety net may be relevant to the determination of the level of the award safety net we note that there is no proposal on this occasion that we should adjust the amount that we should otherwise award because of a particular change in the social safety net. With regard to the decision of the ACTU claim on page 56 paragraph 156 the Commission indicated that:

PN76

*In the May 2000 decision and again last year concern was expressed that as a result of the form of the safety net adjustment in recent years relativities between award classification rates were being compressed.*

PN77

The Commission further noted:

PN78

*No parties sought an increase which was greater at higher levels in the award structure and it follows there is no claim before us which takes account of the compression of relativities and addresses the issue in a direct way and indeed the ACTU submitted that in considering our decision we should pay no regard to the fact that the implementation of its claim would compress relativities further submitting that the relevance of middle and upper award classification rates of pay is becoming acute and is a matter which needs to be addressed. However, the present focus was on delivering a decent increase for the low paid.*

PN79

The Commission stated at page 57 paragraph 159:

PN80

*That in the normal course of reviewing the safety net the commission should seek to maintain a safety net of fair minimum wages for all award reliant employees, not just those employees classified at or below the C10 level and that we are satisfied that a large proportion of award reliant employees are classified above the C10 level. Further that we do not think that the circumstances overall, including the economic circumstances, justify limiting the increase in award safety net in the way the*

*Commonwealth proposes. For similar reasons we reject the submissions of the ACCI and others that any increase we award should be limited in its application to the level of the Federal minimum wage. We also reject the submission made by Restaurant and Catering Australia that only 50 per cent of the increase we decide upon should be awarded to employees of restaurateurs and caterers.*

PN81

At page 58 paragraph 160 and 161 the Commission stated:

PN82

*That we consider that the economic circumstances permit a sizeable increase in the award wages safety net. On this occasion we think it is appropriate to award an increase of an amount which pays regard to the position of employees slightly higher up the classification scales. The increase will provide for the needs of the low paid to the extent that the economic conditions we have identified permit and will maintain the real value of wages of most award reliant employees. We are confident the cost of the increase is manageable and will not impact significantly on aggregate wages growth.*

PN83

*The gross effect on aggregate wages growth should be broadly comparable with that associated with the \$15 adjustment provided for in the May 2000 decision and not significantly greater than that arising from the May 2001 decision. We accept that the increase we have decided upon may have some negative effects on employment in those sectors of the economy in which a high proportion of workers are award reliant. Because safety net increases only directly apply to wages of around 23 per cent of the employed workforce the aggregate impact of the adjustment on employment will be small.*

PN84

The Commission decided to award an increase of \$18 in all award rates subject to the following conditions, and this is page 59 paragraph 163:

PN85

*The increase will be fully absorbable against all above-award payments; except where permitted ...(reads)... the method of adjustment is to be consistent with the Furnishing and Glass Industries Allowances decision.*

PN86

The Commission, at paragraph 164 stated that:

PN87

*Consistent with our decision the Federal minimum wage will be increased by \$18 per week to \$431.40 per week.*

PN88

Now, I would like to address the establishment of a State minimum wage. In 1997 the Federal Commission decided to determine a minimum wage to be called the Federal minimum wage for full-time adult employees in a conservative response to an application by the ACTU for a living wage. The Federal minimum

wage was established as the wage below which no full-time adult employee working under a Federal award was to be paid.

PN89

The ACTU had sought the minimum wage payable under the Metal Industry Award, for example, to go to \$3780 per 38 hour week. The Commission set the Federal minimum wage for full-time adult employees at \$359.40 and for junior, part-time and casual employees a proportionate amount. The Commission stated in that decision which was print P197 at page 77 that it decided not to link the level of the Federal minimum wage with any defined benchmark of needs but rather to equate the Federal minimum wage with the minimum classification rate in most Federal awards, that is the rate of the C14 classification in the Metal Industry Award.

PN90

This approach, the Commission stated, lends industrial realism to the minimum wage we have set because it is linked to the classification structure established by the Commission as a result of the August 1989 decision. The Commission, in deciding to establish minimum classification rates in the metal and building industries then stated - this is in the August 1989 decision:

PN91

*Subject to what we say later in this decision we have decided that the minimum classification rate to be established over time for a metal industry tradesperson and a building industry tradesperson should be \$356.30 per week with a \$50.70 per week supplementary payment. The minimum classification rate of \$356.30 per week should reflect the final effect of the structural efficiency adjustment determined by this decision.*

PN92

And then later in the 1997 decision the Commission said:

PN93

*As a result of this earlier decision minimum award were varied over a period of time to reflect the relativities so decided leading to the C14 rate in the Metal Industry Award becoming the minimum classification rate in most Federal awards.*

PN94

The Federal Commission clearly decided to set a floor below which a wage actually paid to an employee for ordinary time should not fall. In determining the actual quantum and indeed the safety net adjustment, the Commission in 1997 took account of contemporary economic factors including levels of productivity; inflation; the desire for high employment; living standards generally and the needs of the low paid, as indeed the Commission has in subsequent living wage cases.

PN95

With regard to other relevant jurisdictions, the jurisdictions of New South Wales, South Australia, Queensland and Western Australia, the Federal minimum wage has been adopted in these jurisdictions. While in 1997 at the State wage case we did not seek to flow on the Federal minimum wage and to establish a State

minimum wage, the effect of the flow on of this and past safety net adjustments and the reformatting of awards has resulted in the adult full-time entry level classification in most awards being the Federal minimum wage.

PN96

Therefore for the majority of private sector awards the establishment of a minimum wage for all adult full-time workers will have no actual effect. However, I understand that there are some awards in which the adult entry level rate of pay is below the current Federal minimum wage which is \$413.40 - sorry, was \$413.40. Some, because of the minimum rates adjustment - some because the minimum rates adjustment requirements have not been completed; some because past safety net adjustments have not been applied; some perhaps because no one relies on the award for their wages and conditions and some perhaps because the entry level rate is set at less than 80 per cent of the tradesperson's rate.

PN97

However, I argue that whatever the reason awards in this jurisdiction like the Federal and other State jurisdictions must ensure that the Federal minimum wage be established as the floor. I suggest therefore that subsequent to this hearing these awards that have a rate less than the Federal minimum wage be identified and the parties required to show cause as to why these awards should not be varied to provide for an adult entry level rate of \$431.40.

PN98

We would argue that where the structural efficiency principle and the minimum rates adjustment has been undertaken and the entry level full-time wage rate is less than the Federal minimum wage then on application it is increased to the Federal or State minimum wage. I am also aware that the annual leave clause relating to payment for a period of leave in some awards, for example the Horticulturalists Award, the Meat Processing Award, makes reference to a minimum wage or a specific amount rather than a 17 per cent annual leave loading in calculating the annual leave payment.

PN99

Our intention in seeking to establish a State minimum wage is not to provide workers with either a lesser or greater amount of annual leave loading. For example, we don't intend that the Meat Processing Award provide for an amount of \$431.40 to be paid as annual leave loading. As I have proposed with awards which currently have an adult entry level of less than the current Federal minimum wage so too I propose that all awards with an annual leave loading provision, that rely on a specific amount, be identified and the parties be required to propose how these be addressed.

PN100

In most circumstances it will be quite simple as has been proposed and in fact done with the Public Accountants Award where the relevant subclause has been replaced with a provision that provides for 17 per cent loading rather than a minimum rate. With regard to the application of the minimum wage generally so if a State minimum wage was provided for, section 35(1)(b) and (5) of the Industrial Relations Act 1984 provides that:

PN101

*A Full Bench of the Commission may make provision for or alter a minimum wage that is to be payable to adults without regard to the work performed -*

PN102

and that -

PN103

*such a provision may be applied to all awards or to such other awards as are specified by the Full Bench.*

PN104

Section 61F, minimum conditions of employment requires that:

PN105

*For an employee not otherwise covered by an award or registered agreement conditions of employment fixed by an enterprise agreement in respect of rates of pay must not be less than (b) in the case of a person who is an adult an hourly rate calculated by reference to the minimum wage as established by the Commission under section 35(1)(b) and to the ordinary weekly hours of work for which that person is employed.*

PN106

The acceptance of the Federal minimum wage as the minimum wage established by the Commission will clearly mean that there will be a flaw established for an adult full-time employee, whose conditions of employment are fixed by an enterprises agreement. Just as there will be a flaw for adult full-time employees whose wages and conditions are determined by a private sector award of the Commission. Our application seeks to establish the Federal minimum wage of \$431.40 as the minimum wage in this jurisdiction. With regard to the Federal Statement of Principles and matters considered and decided by the Commission, submissions were made to the Commission concerning the Statement of Principles, and of particular relevance to our application, principle 1 titled Role of Arbitration and the Safety Net, and principle 12 titled Economic Incapacity. The Commonwealth on page 59 of the decision, at paragraph 166 submitted that:

PN107

*The Act requires a more positive application of an incentive to bargain than has been suggested in recent safety net review decisions. It said the priority that the workplace relations system should accord to enterprise level agreement making is not adequately articulated in the principles. The Commonwealth proposed an amendment to principle 1 to refer to an incentive to bargain for enterprise and workplace agreements.*

PN108

ACCI at paragraph 167:

PN109

*Supported the Commonwealth's proposal. It submitted the proposed amendment would ensure the principles appropriately reflect the primacy afforded to enterprise level agreement making under the Act.*

PN110

The ACTU predictably at paragraph 168:

PN111

*Opposed the Commonwealth proposal. It submitted there was no evidence which justified any need for change. It referred to the submissions of the Commonwealth that since September 2001 the number of enterprise agreements had increased. It submitted that the obligations of the Commission are clearly set out in the Act and do not need to be restated in the principles.*

PN112

The Commission concluded at page 60, paragraph 171 that:

PN113

*Any principles made by us must be consistent with the Act. The proposed amendment does not paraphrase or reproduce any provision of the Act. The Act does not refer to an "incentive to bargain". We are not persuaded it is either appropriate or necessary to amend principle 1.*

PN114

The Commonwealth further submitted at page 64, paragraph 199 that:

PN115

*Amendments were needed to the Economic Incapacity Principle. It said the paucity of applications that had been made under the principle indicated that it may need to be reviewed to make it more accessible. The Commonwealth submitted that the requirements of the principle are so onerous they amounted to a disincentive. It sought amendments to achieve three objectives. These were easing the administrative and procedural burden on enterprises seeking relief, easing the evidentiary burden required of them and acknowledging the needs of small business seeking relief under the principle.*

PN116

The Commonwealth further submitted, page 65, paragraph 201 that:

PN117

*A single Commission member would approve an application if satisfied that the employer had properly consulted with its employees, and formed a view that a refusal was likely to lead to a loss of jobs and/or threaten the viability of the business. Any supporting evidence, if it was required, could be presented by affidavit. The matter could be dealt with "on the papers" or if a hearing was required it would be expected to be brief.*

PN118

The Commission replied, page 66, paragraph 211:

PN119

*That the operation of the Economic Incapacity Principle has been considered in the context of the present Act on several occasions. Proposals to vary the principle are not new.*

PN120

And indeed, at paragraph 213:

PN121

*That several of the arguments unsuccessfully put in support of the amendments to the principle have again been put to us.*

PN122

The Commission concluded at paragraph 219:

PN123

*We are not persuaded that the paucity of applications under the principle is evidence of a need to amend the principle. We agree with the submissions of the State Labor Governments that, to the extent the submission of ACCI is said to be evidence, it is no more than an expression of the view of members (details of which were not given) that such an application would be difficult. Nor are we satisfied that the reference in the principle to the grounds upon which an application can be made is inappropriate. Exemptions from an award obligation to pay an arbitrated safety net adjustment should only arise in circumstances of "very serious or extreme economic adversity". The reference to evidence being "rigorously tested" does no more than alert an applicant to what would properly be the level of consideration that any member of the Commission would bring to evidence led in support of an application.*

PN124

And further at 220:

PN125

*We are not persuaded that any case has been made out for a special procedure for small business employers.*

PN126

And at paragraph 222:

PN127

*We do not propose to alter the reference in the principle to "any respondent or group of respondents to an award". We are not persuaded that relief should be available to a group of employers or to employers within a "sectoral, industry or regional level".*

PN128

*We reject the submissions of the AHA and the ACCI that any relief granted under the principle to reduce or postpone an increase should not necessarily be subject to a further review. We think it is appropriate that the principle remain unchanged. It provides sufficient discretion to the Commission to decide the date upon which any such review should be undertaken.*

PN129

As to why the Tasmanian Industrial Commission, the Full Bench of the Tasmanian Industrial Commission should flow on the decision of the Federal Commission, there are a number of strong arguments as to why this should occur.

Firstly with regard to past practice and precedent it is appropriate to reiterate that on no previous occasion since the Commission's introduction of the current regime of wage fixing principles in 1985 has the Commission declined to flow on the quantum of wage increases awarded by the Federal National Wage Case or safety net adjustment decisions.

PN130

With regard to Tasmanian economic conditions, Mr Pearce has advised the Full Bench of the submission put by all state Labor governments to the Federal Commission, and I refer briefly to the states' recent economic performance as detailed in budget paper 1, and that is in tab 3 of that exhibit 1. With regard to economic performance in terms of wages the rate of wages growth in Tasmania, and this is from that budget paper, the - on page 34 and 35:

PN131

*The rate of wages growth in Tasmania has not kept pace with that of Australia as a whole over recent years. Tasmanian AWOTE has risen by an average nominal rate of 3.8 per cent in the five years to 2001, compared to the national growth of 4.1 per cent. The level of AWOTE in Tasmania remains below the national average. In 2000/2001 Tasmanian AWOTE was just over 92 per cent of the Australian level, that is \$744.88 per week compared with \$808.83. In the first three quarters of 2001/2002 Tasmania's AWOTE rose by 4.1 per cent (in trend terms) compared with growth of 0.8 per cent for average total earnings.*

PN132

In terms of labour market employment, and this is on page 35:

PN133

*The labour market weakened in early 2001 as a result of the national economy slowing considerably. The rebound from mid-2001 reflects, in part, the \$152 million stimulus package introduced by the State Government as part of the 2001/2002 budget to counter the impact of the national and international economic slowdown. Notwithstanding the economic stimulus package, this erosion of the state's key markets, saw employment fall from late 2001. On current trends, employment is expected to ease -*

PN134

Treasury's word, not mine -

PN135

*by 1.2 per cent in 2001-02, the first such decline in four years.*

PN136

And I refer you to table 2.1 on page 35, which shows the estimated easing of employment in 2001 and the forecast growth of .6 per cent in the current financial year. With regard to labour force participation and unemployment on page 37:

PN137

*Tasmania's recorded participation rate has always been below the national average, but the gap widened around the middle of the 1990s. Since the mid-1990s the gap between the Tasmanian and national participation rates*

*has widened from about 2.3 percentage points to around 4.6 percentage points in 2000-2001. The Treasury document suggests that the recent decline in the state's participation rate is likely to reflect, in part, a trend towards increased post-secondary education as students generally withdraw from the labour force.*

PN138

This assertion is substantiated with some evidence in increased enrolments at TAFE, vocational education and training enrolments generally, and the university enrolments increasing over the period 1999-2002. With regard to the economic outlook, or the forecast, labour market figures based on current trends, treasury expects employment to ease by 1.2 per cent in 2001-01 as I have stated as a result of negative external influences on the state's economy, but is forecasting growth of .6 per cent in 2002-2003.

PN139

And there are a number of specific developments that treasury has taken into account in formulating its employment forecast for 2002-2003 and these include the impact of a State Government's fiscal stimulus from the 2001-2002 and 2002-2003 budgets, the continued investment in the natural gas project, further expansion in the State's call centre industry, establishment of component assembly plant associated with green generation projects, boosts to employment investment arising from the decision to deregulate shop trading hours, and a number of tourism developments ahead of the anticipated rise in visitor numbers following the commencement of two mono-hulled vessels across Bass Strait.

PN140

The Government's policy of no inner budget redundancy programs and the increase in general government expenditure in 2003 will also underpin public sector employment levels. Against this backdrop of modest improvement in the labour market in 2002-03 the State's participation rate is forecast to average 58.2 per cent for the year, unchanged from the anticipated level for 2001-02, but below the 5.1 per cent recorded in 2000-2001. The Treasurer, in his speech, and again this is at tab 3, and it is from the budget speech, and I think I have an apology here, and this is not my staff, but me. You have got pages 3 and 7 and I think I am only referring to page 7. The Treasurer said, and he said:

PN141

*Treasury has estimated jobs growth to be around 4000 over the next 12 months and forecast a continuing reduction in the unemployment rate to 8.4 per cent. This forecast has been consistent with recent assessments by Access Economics, which is now predicting similar job growth. It is also consistent with the most optimistic outlook in recent times recorded by the latest Tasmanian Chamber of Commerce and Industry/Commonwealth Bank survey, and consistent with the recent ABS Australian Business Expectations and Yellow Pages Index.*

PN142

The Treasurer concluded:

PN143

*The Government's message to the business community in Tasmania is very clear. The competitive business environment is the best it has ever been in the State. An unprecedented number of major projects are occurring or about to occur, creating a range of indirect business opportunities and the national/international economic outlooks are overwhelmingly positive.*

PN144

And I must humbly apologise, that is on page 9 and you don't have that, so you will have to take my word for it.

PN145

THE PRESIDENT: We can easily check it.

PN146

MS FITZGERALD: Thank you. Again, the last two pages are on 27 June on release of the ABS Job Vacancy Survey, the Treasurer stated:

PN147

*There is a growing demand in Tasmania's labour market this year, which will convert to more jobs. ABS figures show job vacancies have grown impressively by 8.3 per cent between February and May 2002, to compare to a 1 per cent growth of the nation as a whole over the same period.*

PN148

In summary the Treasury and Government economic and labour market analysis demonstrates that the Commission's decision last year did not adversely affect employment. Additionally, given the Treasury forecast, the increase being sought today will not have a detrimental impact on the level of employment in Tasmania, and thus the Full Bench can be satisfied that the public interest test is met. With regard to equity issues, in the past the Commission has accepted that it would be wrong in terms of consistency, comity, equity and equal treatment for all Tasmanian workers to refuse to flow on the Federal decision in circumstances where: one, State awards cover approximately 25 per cent of award covered workers in Tasmania. And two, where there has been no employer objection to flow on the increases in Federal awards that apply in Tasmania.

PN149

This argument remains valid, not only for the quantum of increase to award rates of pay being sought, but equally to the application to establish the Federal minimum wage as the minimum wage in this jurisdiction. I am advised by a number of unions that Federal awards having application in Tasmania have indeed been varied to incorporate the safety net adjustment without opposition from employers or employer organisations. If an employer can clearly demonstrate that an increase in labour costs would cause serious or extreme economic adversity, and result in job losses at the enterprise level, an application to reduce, postpone or phase in the increase can be made in accordance with the economic incapacity principle.

PN150

With regard to the public interest and the needs of the low paid, whilst the Federal Commission has explicit responsibilities with respect to the needs of the low paid, this Commission has accepted our argument that needs of the low paid is a matter

the Commission takes into account in considering the public interest. The witness evidence provided in the Federal Commission showed that life for the low paid is a struggle, and I have advised the Full Bench that two of the witness statements relied upon were provided by workers in Tasmania. Although the evidence provided by witnesses to the Federal Commission was not disputed, to bring some stark reality to our application to establish fair and decent wages for low paid workers I seek the indulgence of the Commission to read an extract from one of the Tasmanian witness statements:

PN151

*The stove we have been using for 16 years over time ceased to work. The oven stopped working three years ago, leaving my wife to prepare meals on two hot plates. Then she was reduced to cooking on one hot plate for six months. We could not afford to replace the stove until we received my tax refund last year. Without the forced savings from my tax refund my wife would still be cooking on one hot plate. We did not have any other savings to use. We would like to say that every time we have some money put aside another unexpected expense occurs. The house in which we live is in need of maintenance. The walls are deteriorating and the roof needs replacing. These expenses are beyond our reach financially and finally my family has never been able to afford travel for a holiday. Every holiday I have ever had has simply been at home. It is not possible for the family to go to a restaurant, the cost is far too much for seven people.*

PN152

This is a man, his partner and their five children, young children.

PN153

*We have not bought new clothes for the last two years. We buy our clothes at second hand stores. The simple task of buying food has to be a planned activity. In order that we save money my wife will go to the supermarket on Saturday afternoons and wait until the perishable items like meat are reduced in price. As the children grow older their expenses for education, food and clothes are increasing, which is constantly putting extra pressure on my limited income, making it ever more difficult to pay all the bills.*

PN154

The safety net increase of \$18 will go some small way towards assisting this man, his family and indeed many other low paid workers to try to make ends meet. In concluding, the application to flow on increases from the common operative of 1 August 2002 is sought for the following reasons: 12 months will have elapsed since awards were last varied for the safety net adjustment. If the Commission decides to flow on the increases it is equitable to ensure that all eligible workers receive the increase not later than 12 months after the last adjustment, and that matters outside their control do not delay the application of the increase, and it is administratively efficient and effective, both for the Commission and the parties, for a common operative date with orders being issued by the Commission.

PN155

I have submitted that the Tasmanian Treasury's forecast for the 2002-2003 year indicates that the Tasmanian economy is stronger than it has been in the past, that employers have not opposed the increases in wages in Federal awards, and that

the Commission decide, as it has in the past, to vary State private sector awards to reflect the decision of the Federal Commission from the common operative date of 1 August 2002.

PN156

And finally in your exhibits you have a memorandum of understanding between the Tasmanian Chamber of Commerce and Industry and the Tasmanian Trades and Labor Council, which I don't intend to read, which is virtually the same as was agreed last year, but a change in dates and a point of clarification that Mark Watson made last year, which indicates that the safety net adjustment be reduced to the extent of any over award payment or enterprise bargaining increase currently being paid by the employer.

PN157

THE PRESIDENT: Ms Fitzgerald, were you aware generally, and it is a general question, of the status of all of the awards of this Commission? I imagine that some would have rates that are at the Federal minimum or in excess of. Some would not, they would be less than that. Some would have gone through the reformatting minimum rates adjustment process and perhaps theoretically should now be at the minimum wage. Some contain what I can only refer to as an unusual leave loading provision, some do not. And some of the awards may have no relevance whatsoever.

PN158

MS FITZGERALD: Yes.

PN159

THE PRESIDENT: So those are all the issues that we would have to look at in consideration of the claims that you are putting forward, so that would require perhaps some review or investigation, because there are varying different scenarios that we need to address, you agree - - -

PN160

MS FITZGERALD: I do agree with that, I do.

PN161

THE PRESIDENT: - - - with that, yes.

PN162

MS FITZGERALD: Yes, I do.

PN163

THE PRESIDENT: Right.

PN164

MS FITZGERALD: We have had like what they actually provided - some work they had done in terms of looking at that and there are quite a number of variances and quite a, you know, reasonable number of awards where there is a rate that is lower than the federal minimum wage.

PN165

THE PRESIDENT: And one would suspect that where that applies it could be a significant impact on employers as to an increase. That also needs to be established - - -

PN166

MS FITZGERALD: That needs to be established - - -

PN167

THE PRESIDENT: - - - yes.

PN168

MS FITZGERALD: - - - if in fact that is the case or whether or not there are - workers are not in fact relying on that award for their rates of pay or conditions.

PN169

THE PRESIDENT: That is right. Yes, yes. So it would be very simple to make a general order to do all this, but it is not going to be that simple.

PN170

MS FITZGERALD: No, not for that particular issue.

PN171

THE PRESIDENT: Yes. That is fine. Thank you.

PN172

MS FITZGERALD: Can I ask a question, because I am not quite sure how to proceed now? We deal with this matter first and then deal with the supported wage?

PN173

THE PRESIDENT: I think if we deal with the big issue first and then move on to the other two applications.

PN174

MS FITZGERALD: Thank you.

PN175

THE COMMISSIONER: Ms Fitzgerald, before you sit down there is one aspect of the Treasury forecast which I don't quite understand. On page 35 of the Treasury Tasmanian economy document there is a table which predicts that employment will grow by .6 per cent - - -

PN176

MS FITZGERALD: Yes.

PN177

THE COMMISSIONER: - - - in the next financial year. And on page 7 of the Treasurer's statement it says:

PN178

*Mr Speaker, Treasury has estimated jobs growth to be around 4000 over the next 12 months and forecast a continuing reduction in the unemployment rate to 8.4 per cent.*

PN179

On a workforce of around 200,000 as I understand it, my arithmetic suggests that .6 would equate to 1200 or thereabouts, rather than 4000. I appreciate that these aren't your figures - - -

PN180

MS FITZGERALD: No.

PN181

THE COMMISSIONER: - - - but can you throw any light on it?

PN182

MS FITZGERALD: No, I can't unfortunately, I am sorry. All I can do is provide you with the information they have provided, but as you say they are only expecting employment to increase by .6 per cent. They are saying that is 4000 jobs and then the subsequent information, so, yes.

PN183

THE COMMISSIONER: Yes, it is unusual.

PN184

MR WATSON: President, Mr Behrens might be able to provide an explanation as to Commissioner Abey's question.

PN185

THE PRESIDENT: Fine, thank you.

PN186

MR BEHRENS: The Treasurer says that initially it is contained in the budget will increase jobs by about 4000 positions, whereas the Treasury document highlights an increase of 1200. The 1200 is a net figure, whereas the Treasurer's quoted 4000 positions could also assume that 4000 jobs are created, but at the same time in other areas 2800 jobs are lost. Accordingly the Treasury figure of 1200 is a net figure. Does that clarify things for you?

PN187

THE COMMISSIONER: Well, with respect, it says:

PN188

*Treasury has estimated jobs growth to be around 4000.*

PN189

MR BEHRENS: As a result of the initiatives within the budget, not in the Tasmanian labour market.

PN190

THE COMMISSIONER: So the reality is we are dealing with a Treasury estimate of 1200, not 4000?

PN191

MR BEHRENS: Correct.

PN192

THE COMMISSIONER: A very unusual way of expressing it. I am not casting any aspersions on anyone here, but it is a very unusual way of expressing it as a forecast. Thank you, Mr Behrens.

PN193

THE PRESIDENT: Maybe the secret is in page 9 that we don't have.

PN194

MR BEHRENS: I think it is also that it is a Government press release.

PN195

THE PRESIDENT: We make no comment.

PN196

MS FITZGERALD: Well, I mean that is - sorry, just to elaborate, it wasn't only a press release issued at that time, that statement was also made at the time of the budget, so they were quite clearly saying 4000 jobs. It is in his budget speech.

PN197

THE PRESIDENT: All right. I take it we can't advance that much further.

PN198

MS FITZGERALD: No.

PN199

THE PRESIDENT: Mr Tullgren, did you wish to say anything?

PN200

MR TULLGREN: Just, your Honour, just to indicate we support the submissions of the, of Unions Tasmania, but in relation to one matter that you asked my friend a question about, was a number of awards that have a minimum rate which is less than the Federal minimum award. While Commissioner Abey was in fact asking my friend a question, I had a quick caucus with others at the table, so I don't - I haven't put this to my friend, but I think the consensus view is the first step in dealing with those might be that if the Commission was so minded, was to actually call a conference of the parties to those awards, so that there could be a discussion about the issues, attempting to distil what issues may need to be addressed.

PN201

And they may include whether in fact initially some of these awards have any operation at all, and then also look at putting in place a strategy to manage how they might be dealt with, because it seems to me, with respect, that there are a number of awards dealing with a - potentially in a piece-meal fashion I think may not be the best, because it would seem, for instance in relation to awards that have, as I agree with your Honour, unusual annual leave calculation arrangements, that it may well be that a common position can be developed about how to deal with those, so that an initial conference, and perhaps using the conference as a forum for progressing those issues as far as it can be would be appropriate, and I understand that my friend, Mr Watson, supports that, and, as I say, a quick caucus with my friends on this side of the table would also support

that. To say for that suggestion we would support the submissions that have been made in relation to the State wage.

PN202

THE PRESIDENT: Yes, I guess my reason for asking was that I feel that we need to proceed with some caution and the process is possibly important, because there seemed to be a number of variations on a theme, and it may be that at the end of the process there may be some consistency within awards and future proceedings.

PN203

MR TULLGREN: Yes.

PN204

THE PRESIDENT: All right. Thank you for that. Mr Griffin did you wish to add anything?

PN205

MR GRIFFIN: Thank you, only to submit that we endorse the submission given by Ms Fitzgerald and endorse that. Thank you.

PN206

THE PRESIDENT: Thank you. Mr Kleyn?

PN207

MR KLEYN: President, likewise. I don't have anything else that I need to say. I think Ms Fitzgerald has said it all.

PN208

THE PRESIDENT: Thank you.

PN209

MR PATERSON: I will just make a few brief comments if I can. Firstly to clarify, I believe, and would seek Mr Watson's confirmation of this, that there were two awards last year that were not varied at 1 August. The agreement between the parties consistent with the memorandum is that those two awards, the Business Services Award and the Silviculture and the Forestation Award - - -

PN210

THE PRESIDENT: Those were the two new awards as I recall.

PN211

MR PATERSON: The two new awards - - -

PN212

THE PRESIDENT: Yes.

PN213

MR PATERSON: - - - will be varied in line with the general variation as from 1 August this year. The second matter I wish to respond to is the question of the minimum wage. Since I - or on assuming responsibility for our union's involvement in the general clerical awards of this Commission I did in fact myself, in '96, identify some 15 awards which had not been through MRA processes, communicated that to the Chamber of Commerce and Industry, at that

time or shortly thereafter made six applications to remedy that. Two of those applications are still alive and before the Commission but the determination or the interest of all parties in moving those awards has waned for various reasons, largely to do with resourcing and at this point in time I believe there is probably 10 out of the 34 awards that we have an interest in this Commission which would be below that minimum rates situation but also have not been through a process of minimum rates adjustment.

PN214

Some of those awards in fact archaic the Entertainment Award, in fact or interest in that award is only in respect of one classification and that is bookmaker's clerk; the Broadcasting and Television Award I suspect is - the field is covered by Federal Awards and it may be an award that is irrelevant in this Commission. If it is not then to the extent that it is not there are enterprise agreements and/or over-award payments which mean the award is not relied on in practice for those rates of pay.

PN215

THE PRESIDENT: Other than as a safety net award.

PN216

MR PATERSON: Other than as a safety net and perhaps as a test for no disadvantage tests in various jurisdictions. Overall across those 10 awards I think there is not only a low density of union membership, which means it is a low priority for us, I think there is probably a low level of employment in the industries that those awards apply to. An example of that, I suspect, is probably the Softwoods Award and I am not sure how many people would be employed under that one, so there are various reasons that don't have to do with - that do complicate the minimum wage issue.

PN217

I endorse the submissions of Ms Fitzgerald in terms of a process which effectively would mean that we are not seeking to overtake a minimum rates process by the establishment of a minimum wage, however it may be that a conference could produce case by case ways of integrating two different approaches to the advantage - - -

PN218

THE PRESIDENT: You have only to identify what is ahead of us.

PN219

MR PATERSON: - - - so I endorse both the principal submissions of the unions Tasmania and the submissions of Mr Tullgren. If the Commission pleases.

PN220

THE PRESIDENT: All right, thank you. Mr Watson?

PN221

MR WATSON: Thank you, President. I would just like to table an exhibit first, if I can, please.

PN222

THE PRESIDENT: I will mark this R1.

PN223

MR WATSON: What was that, sorry, President?

PN224

THE PRESIDENT: R for respondent, 1.

**EXHIBIT #R1 COMPREHENSIVE ANALYSIS OF THE TASMANIAN ECONOMY - JULY 2002**

PN225

MR WATSON: President, and members of the bench, the document that you have before you as exhibit R1 is a comprehensive analysis of the Tasmanian economy as at July 2002. I don't intend to go to the document in any detail, however I will be referring to the document as I work through my submission. I might point out at this point in time that the document has been prepared by Nick Behrens and I think it is an excellent publication.

PN226

THE PRESIDENT: That means he can answer any questions that may be raised about it, does it?

PN227

MR WATSON: All things considered and apart from its labour market the Tasmanian economy since the last State wage case has performed admirably. The State economy has remained resilient in the face of a slow down in national and world growth and uncertainty that occurred during late 2001. There are clear signs that the slow down has affected the Tasmanian economy as demand has fallen in a number of Tasmania's markets. However, given up to 50 per cent of Tasmania's economic activity is derived outside the State, conditions in ..... have held up remarkably well.

PN228

Despite positive progress in a number of indicators Tasmania's labour market remains particularly flat with in roads into employment creation being particularly hard to secure. Indeed job prospects are significantly gloomy at present. Now, there are a number of economic indicators contained within the document and each indicator has an explanation as a preamble to the graph. As you will see from the document Tasmania's economy is performing well in comparison to the national economy with the exception of the indicators total employment, full-time employment and the participation rate.

PN229

Now, if I can take you firstly to on page number 3, graph there total employment, you can see there that clearly the situation in Tasmania is a fair way away from the national situation. Again, if you go over the page to page 4, full-time employment and the participation rate, again there are significant gaps as far as those two gaps are concerned. Section 36 of the Act requires the Commission to take into account the economy of Tasmania with particular reference to the level of employment.

PN230

There has been a decline in full-time employment and total employment over the past six months. We do have some concerns that if granted the application of the \$18 per week will do nothing to improve Tasmania's labour market. Now, there have been comments made in the past that we have been unable to demonstrate that general applications of wage increases will have an effect on the employment labour market. Given that scenario I make the following points.

PN231

The table at pages 3 and 4 of exhibit R1 clearly show that the labour market is not performing and is in decline and secondly, according to the TCCI, Commonwealth Bank Tasmanian survey of business expectations, which I might add is regarded by the Tasmanian Government as the number one survey of its type, will show, when it comes out on Wednesday of next week that direct and indirect labour costs are the second and third highest constraints on business growth.

PN232

It is significant in the context of the labour market that the \$18 per week as decided by the Australian Industrial Relations Commission is the highest safety net adjustment awarded and if this Commission flows the increase on to State awards then similarly it will be the highest increase to State awards through a safety net adjustment. As well as employers having to find the \$18 per week they have to pay an increase of 1 per cent in superannuation from 1 July 2002 and at the same time wrestle with the spiralling cost of public liability insurance.

PN233

We say that the \$18 per week is certainly at the absolute limit of what could be described as an affordable increase and we believe in some cases it will be in excess of an affordable increase. In those particular cases it will be open for the employers to come to this Commission in accordance with the economic incapacity principle and those cases will be dealt with on their merits. Despite the submissions put to you today I advise the Commission that the application before you today is not opposed and similarly we don't obviously oppose exhibit - the document as contained in the TTLC exhibit at point number 4 which is the memorandum of understanding as to how if granted the decision will be implemented in terms of a new principle.

PN234

The decision not to oppose has not been taken lightly. This decision is based on the overall state of the Tasmanian economy including the labour market, but at the same time does not diminish nor do we walk away from our concerns expressed specifically with regard to Tasmania's labour market. Our decision not to oppose is also based on the overall economic outlook, which is as follows. In large measure the document that you have before you as R1 confirms a growing perception that the Tasmanian economy is increasingly on track. It is not yet flying at the level we would otherwise like but is definitely making steady progress.

PN235

Tasmania's labour market remains an area of challenge, As is clearly evident this indicator is some significant distance away from commencing its journey towards recovery. However, in all other areas Tasmania's most recent growth cycle looks set to prevail. The Tasmanian economy should remain sound given the ongoing strong performance of the national economy, the inevitable resurgence of Tasmania's export destinations.

PN236

In TCCIs view positive progress since the last State wage case must also be attributed to an improvement in Tasmania's business operating regime that occurred through an expansive State budget in May 2001 and the commencement of the rolling out of several major infrastructure projects. With the underlying ingredients still positive Tasmania's economy should hopefully continue the growth that has recently occurred.

PN237

Given the high level of the increase and the not opposing the application we urge the Commission to continue to encourage enterprise outcomes and to remain vigilant to sectoral claims. In closing, we do not believe that overall the granting of the \$18 per week offends the public interest test of the Act. President and members of the bench, there are some other matters that I wish to address. First of all the issue of the minimum wage. Certainly this has been the subject of a number of discussions between myself and the TTLC as recently as yesterday and there are also a number of issues that this particular matter raises.

PN238

For example, and they have been mentioned today, the leave loading issue, the rates relative to, in some awards, trainee rates; the issue with regard to relativities so in other words if the minimum wage is put in place will that then upset relativities within the award or do they need to be adjusted; the issue of junior rates and whether or not they are affected. Now, given the fact that the submission is that the minimum wage be established and also given the fact that the submissions are that effectively that won't have an effect on the actual rates paid because we are only talking about those awards where the rate is either at that level or higher, and also given the exchange this morning between the bench and a number of parties I am increasingly of the view that I think we should move this matter into a conference situation between all the parties so as we can have a look at all the issues involved and I would certainly be against any general order in relation to this matter and I think that was the comment that you made, President, about the difficulties associated with that.

PN239

I must say that we did consider putting in an application to vary all awards in relation to leave loading given that the reference between the minimum wage, vis-a-vis leave loading, but as we delve into that there are a number of other issues that became evident and as Lyn has said, I did a fairly comprehensive analysis of all State awards based on whether or not the rate was above or below the proposed minimum wage, leave loading and those awards that actually do contain a minimum wage and it is quite a dog's breakfast, I would have to say, so we would urge the Commission that I think the appropriate course would be to

have a conference with the parties as soon as possible, not proposing to delay the issue at all, and we would proceed down that path.

PN240

THE PRESIDENT: So is your concern more procedural than principle?

PN241

MR WATSON: Well, I think procedurally as well as some of the issues that we need to talk through - - -

PN242

THE PRESIDENT: Yes.

PN243

MR WATSON: - - - with all the parties and I note that there are some parties not present today and I think it would be dangerous to go haring off without that process having been undertaken.

PN244

THE DEPUTY PRESIDENT: Well, what are you really suggesting in relation to a conference; are you - is it award-by-award conference or a general conference presided over by a member of the Commission or what? What do you mean by it?

PN245

MR WATSON: Well, I think a general conference presided over by maybe this bench where we can talk about all the issues involved, Deputy President, because I mean, there are - I mean, we could go to the issues now but I mean, I would suspect we are going to be here all day so there are - and look, I mean, I have just highlighted some.

PN246

THE DEPUTY PRESIDENT: So where does your view differ from the labor council's view in relation to the conferences? I gleaned that the labor council was saying award-by-award approach and you are saying now a general conference.

PN247

MR WATSON: Well, look, I think - I mean, we did have some discussions about this, actually setting the minimum wage for those awards where the rate is above and I guess we don't necessarily oppose that approach but what I am saying is that given the exchange that is happened in these proceedings about all the issues I just wonder - and also given the fact that it doesn't actually have an affect as I understand the TTLCs position, that we should sit down and discuss all the issues in a conference situation and then if we need to come back to some arbitral proceedings or an award-by-award basis then so be it. I just think it is an eminently sensible way to go.

PN248

THE PRESIDENT: I think we need to identify what it is that could fall out of all of this.

PN249

MR WATSON: That is right.

PN250

THE PRESIDENT: Basically, if I understand you to say that where the minimum wage is already in the award that you don't have a problem with that, but you have some concern as to some of the conditions in some of those awards that may rely on the current minimum wage that is there?

PN251

MR WATSON: That is right.

PN252

THE PRESIDENT: So I guess it is a case of looking at each award and seeing where it sits in the whole picture and the bonus out of all this may well be as Mr Paterson has indicated, there may be some awards that are not relevant any longer and can be set aside.

PN253

MR WATSON: Yes, that may be the case, President.

PN254

THE PRESIDENT: Yes.

PN255

MR WATSON: But I mean, obviously there would need to be a certain process undertaken before we set an award aside as well.

PN256

THE PRESIDENT: Indeed. Oh yes. Well, I am not suggesting we do it that easily, but then obviously seem to be.

PN257

THE COMMISSIONER: There is provision in the Act to rescind awards.

PN258

THE PRESIDENT: Yes.

PN259

MR WATSON: Yes.

PN260

THE PRESIDENT: No, I understand your position.

PN261

MR WATSON: So just a couple of other matters, President and members of the bench, I would suggest that coming out of these proceedings it would be a very good idea if the Commission were to consolidate all awards as a process matter. I think one of the things that this Commission has done extremely well over the journey has actually been to readily consolidate awards and given the fact that we are dealing with three matters in these proceedings I think it would be a good sensible idea to actually consolidate all awards if at all possible.

PN262

One of the problems that I guess that you do have in other jurisdictions is that a number of amendments actually appear as far as awards are concerned but you

can't actually get a consolidation so I think as far as this Commission is concerned that would be something that we would support. As far as the support of wages is concerned obviously that simply flows from the Federal decision to move the supported wage to \$56 so that application is supported.

PN263

As far as the meal allowance application is concerned I don't believe that there was any submission put to you as to the actual amount of the increase.

PN264

THE DEPUTY PRESIDENT: We haven't heard it yet.

PN265

MR WATSON: Oh, I am sorry.

PN266

THE PRESIDENT: No, I think Ms Fitzgerald was just dealing with

PN267

the wage increase, the minimum wage. Yes.

PN268

MR WATSON: Okay, so when the submissions are made I will just have something to say about the meal allowance but in principle we support the application. If it pleases.

PN269

THE PRESIDENT: Thank you. Any questions?

PN270

THE COMMISSIONER: No.

PN271

THE DEPUTY PRESIDENT: I am just interested in the process again with this minimum wage. Are you suggesting to us then that this matter, this bench, adjourn this aspect of the minimum wage case to have a conference of the parties?

PN272

MR WATSON: I guess yes, that is right, Deputy President. The only reason I say that is that given the fact that it doesn't actually have any effect based on what I understand the TTLs submission to be, that is that it only be determined for awards where the rate is either at that level or higher, then I don't believe - I suppose you would call it a delay of a couple of weeks or a month is going to make any difference to where we are heading with this, but I just think there are so many issues that come up and a number of them have actually come up in these proceedings, that we do need to sit down and just see where we are going with it and make sure we have got all the issues covered before the Commission makes any general order. That is all I am saying.

PN273

THE PRESIDENT: If it is by general order.

PN274

MR WATSON: Yes.

PN275

THE PRESIDENT: All right. Ms Fitzgerald? I think your supported wage wouldn't take too long.

PN276

MS FITZGERALD: I know. Thank you. We, as has been said lodged application to vary the supported wage system clauses in awards of the Commission by increasing the minimum amount payable to employees engaged on the system from 51 to \$56 per week. By application in November 1995 the Tasmanian Trades and Labor Council sought to vary nominated awards of the Commission to reflect a decision of the Full Bench of the Federal Commission dealing with the implementation of the supported wage system.

PN277

The supported wage system clause was inserted into awards to facilitate the engagement of workers with disabilities in open employment at a rate of pay commensurate with the employee's assessed productive capacity. In order to make an adequate assessment of the employee's capacity a trial period of 12 weeks, which in some cases could be extended to four weeks, was available which would attract a minimum payment of \$45 per week.

PN278

The minimum amount payable was directly related to the Commonwealth Government's income test applicable to a single person receiving a disability support pension. The Full Bench of the Tasmanian Commission was satisfied that the proposed scheme had substantial merit and was in the public interest. In 1999 the TTLC made application to increase the minimum amount payable to employees engaged under the system from \$45 to \$51 as from the first full pay period to commence on or after 1 February 2000 and I refer to a decision of the Full Bench of the Australian Industrial Relations Commission, print PR918422 of 3 June 2002 where in an increase in the supported wage minimum payment was granted.

PN279

In seeking to adjust the minimum payment under the supported wage system the ACTU, which took application, took account of the level of disability support pension income test free area of earnings which currently stands at \$112 per fortnight which is equivalent to the \$56 per week. The ACTU in its submission table the relevant Centrelink guide to Commonwealth Government payments which confirmed that figure. This application has been discussed with the TCCI and as has been indicated we have their support in seeking to update the minimum payment in awards of the Tasmanian Commission. In conclusion I would submit that the application is in the public interest and does not offend the wage-fixing principles of the Commission. Thank you.

PN280

THE PRESIDENT: Are we looking at the same date as the safety net adjustment?

PN281

MS FITZGERALD: Yes, as from 1 August 2002.

PN282

THE PRESIDENT: Right. Do any of the other unions want to make any comment about that application or you are all in support of it, I presume? Mr Watson, you have already indicated your position, did you - - -

PN283

MR WATSON: That is right, President. I think one of the things that came out of last year's State wage case proceeding was that we have these other matters that - like meal allowances and supported wage, etcetera, coming on and I think it just makes good sense to deal with them all at the same time and - both from the party's point of view and from the Commission's point of view and also in relation to orders. We certainly support the application.

PN284

THE PRESIDENT: All right, thank you. No questions from that? The last one we need to deal with is the application to increase meal allowances. Ms Fitzgerald or Mr Paterson, who is doing this one?

PN285

MR PATERSON: If the Commission pleases. This is an application that has - follows exactly what Mr Watson has said, a pragmatic application to bring on the adjustment to the meal allowances in State awards to facilitate a single order being made which encompasses a number of variations. I do seek leave of the Commission and the agreement of the parties to vary the application. The application that is before you was for the 12 months, June to June. Those figures are not yet available for the June quarter and wouldn't be for another fortnight.

PN286

We have agreed with the TCCI that it is an appropriate course of action to vary for the three-quarters to the March quarter, so if I move you through the page in the application that is headed Consumer Price Index Club ABS 6401.1 weighted average eight capital cities. I will read through what it should be and then I will provide the Commission with a corrected copy later in the day.

PN287

Meals out - this is how the application should read and how I seek to amend it. Meals out and take away foods. Index 1989-90 equals 100. June quarter index 2001 145.2. The next line should read March quarter index 2002 148.7. The four lines for the formula remain the same. The A equals should be A equals March 2002 equals 148.7. The next line should be B equals June 2001 equals 145.2. The formula should read 148.7 minus 145.2 divided 145.2 multiplied by 100 and that produces a number, which I believe is 2.4, the percentage movement, which is then equals 2.4 and that is the end of - the next line would read then percentage movement June 2001 to March 2002 equals 2.4 per cent. The next line would remain the same, and the allowance resulting from 2001 review would be \$11.90, so if the Commission pleases that would be the amended application.

PN288

THE PRESIDENT: No objection to the amendment I take it.

PN289

MR WATSON: No, no, that is fine, President..

PN290

THE PRESIDENT: Again you will provide us with a - - -

PN291

MR PATERSON: I will provide you with a clean copy of that - - -

PN292

THE PRESIDENT: - - - a clean document.

PN293

MR PATERSON: - - - when I return to my office this afternoon. In terms of the principal submissions I just simply submit that this variation is in accordance with the principles of the Commission and in accordance with the previous decisions as cited in the Statement of Particulars of the application. I submit that as I said it accords with the wage fixing principles under movement of expense related allowances consistent with the public interest, and I believe has the consent of the employer advocates at this hearing, if the Commission pleases.

PN294

THE PRESIDENT: Thank you.

PN295

THE DEPUTY PRESIDENT: Mr Paterson, I assume it follows that your intent is that if this pattern continues into future years then this will be a one off and next year it would be 12 months March to March; is that it?

PN296

MR PATERSON: This is a one off three-quarter application. In subsequent years we would be intending to have the full 12 months up to and including the March quarter.

PN297

THE DEPUTY PRESIDENT: Thank you.

PN298

THE PRESIDENT: Mr Watson?

PN299

MR WATSON: I can confirm President and Members of the Bench that that matter is agreed. We agreed with the calculations and again believe it is the sensible way to go in terms of process.

PN300

THE PRESIDENT: I certainly agree with you that it is a very sensible way to go providing the timing is right. That is usually where we get caught out on some of these things. Can I just tie together where we are at with the three applications. The first application is the flow on of the \$18 increase in the Federal decision. That is not opposed by the employers, and the operative date of course would be 1 August, first pay period on or after August.

PN301

The other application, the minimum wage, or the Federal minimum wage claim requires some consideration I think as to process, and that is something we will

have to deal with. The other two applications are in respect to the supported wage increase and the variation to the meal allowances are all agreed matters. There is nothing else - it is a bit of a dog's breakfast, I think, it has been already yesterday, this morning, because of the number of applications. There is nothing else we need to deal with is there?

PN302

I think what we will do is advise that we confirm the flow on of the \$18, the application to increase the supported wage and the meal allowances, both from the first pay period on or after 1 August this year. In respect to the minimum wage, I think we have identified some difficulties with process and we need to consider how we deal with that, and what I would propose is that certainly by the end of next week there will be an indication as to where we will go with that. I think it is something we need to deal with pretty quickly, but I am concerned that it is throwing up some issues that we may not have even thought of yet. So on that basis we will adjourn the proceedings and a formal decision will issue in due course. Thank you.

**ADJOURNED INDEFINITELY**

**[11.25am]**

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