TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3584 of 1991

IN THE MATTER OF an application by the Tasmanian Trades and Labor Council to vary all private and public sector awards and agreements

re review the Wage Fixation Principles

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT
COMMISSIONER IMLACH

Hobart, 12 December 1991

TRANSCRIPT OF PROCEEDINGS

unedited

PRESIDENT: Appearances, please.

MR J. BACON: Mr President, if the commission pleases, I appear on behalf of the Tasmanian Trades and Labor Council and unions generally, BACON J.

PRESIDENT: Thank you, Mr Bacon.

MR R. HUNT: Mr President, I appear on behalf of the Tasmanian Public Service Association, ROD HUNT. If the commission pleases.

PRESIDENT: Thank you, Mr Hunt.

MR G. COOPER: Mr President, if the commission pleases, I appear on behalf of the AWU, COOPER G.

PRESIDENT: Thank you, Mr Cooper.

MR A.J. GRUBB: If the commission pleases, GRUBB A.J. on behalf of the Federated Clerks' Union of Australia, Tasmanian Branch, and the Amalgamated Society of Carpenters and Joiners Australia, Tasmanian Branch.

PRESIDENT: Thank you, Mr Grubb.

MR C. LANE: If the commission pleases, CHRIS LANE, I appear on behalf of the Tasmanian Teachers' Federation and the Tasmanian Institute of Senior Education Administrators.

PRESIDENT: Thank you, Mr Lane.

MR J. GLISSON: If the commission pleases, JOHN GLISSON appearing for the Federation of Industrial Manufacturing and Engineering Employees.

PRESIDENT: Thank you, Mr Glisson.

MR R. RANDALL: If the commission pleases, RANDALL, Ricky Steven, I appear on behalf of the Plumbers and Gasfitters Employees' Union, Tasmanian Branch, and the Electrical Trades Union, Tasmanian Branch.

PRESIDENT: Thank you.

MR C. SHIRLEY: If the commission pleases, CLEM SHIRLEY on behalf of the Ambulance Employees' Association of Tasmania, and the Bakery Employees, and the Salesmens Federation of Australia, Tasmanian Branch.

PRESIDENT: Thank you, Mr Shirley.

MR P. NOONAN: If the commission pleases, I appear on behalf of the Shop Distributive and Allied Employees' Association, NOONAN P.J.

PRESIDENT: Mr Noonan.

MR G. HORTON: If the commission pleases, GAVIN HORTON, appearing on behalf of the HSU.

PRESIDENT: Thank you, Mr Horton.

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

PRESIDENT: Thank you, Mr Hansch.

MR P. BEVILACQUA: If the commission pleases, PETER BEVILACQUA on behalf of the Tasmanian Catholic Education Employees' Association.

PRESIDENT: Thank you, Mr Bevilacqua.

MR T. EDWARDS: If it please the commission, EDWARDS T.J., I appear for the Tasmanian Confederation of Industries, the Meat and Allied Trades' Federation, the Master Builders' Association of Tasmania, The Tasmanian Farmers & Graziers Industrial Association, the Tasmanian Electro-Metallurgical Company, the Printing and Allied Trades Employers' Federation of Australia, the Hop Producers' Association of Tasmania, the Metal Industries Association Tasmania, and Pasminco Metals - EZ.

PRESIDENT: Thank you, Mr Edwards.

MR J. McCABE: If the commission pleases, J. McCABE, I appear for the Minister for Employment, Industrial Relations and Training, pursuant to section 27 of the Act.

PRESIDENT: Thank you, Mr McCabe. You've got the nod.

MR D. HANLON: HANLON, D.P., I appear for the Minister administering the State Service.

PRESIDENT: Thank you, Mr Hanlon.

MR S. KNOTT: If the commission pleases, KNOTT, S.P., appearing on behalf of the Australian Mines and Metals Association.

PRESIDENT: Thank you, Mr Knott. Mr Bacon?

MR BACON: Mr President, despite the large number of appearances in the matter, we are not - I don't think anyone in the room is expecting an extremely lengthy proceedings today, so -

PRESIDENT: I'm disappointed.

MR BACON: Are you? I think you'll be the only one who is, Mr President.

Mr President, and members of the Bench, this TTLC application is in large part a continuation of the state wage case earlier this year and the corresponding national wage case.

In particular the application seeks the insertion of an enterprise bargaining principle in the principles of wage fixation of this commission in line with the national wage case decision of 30th October 1991 which is contained in Print KO300.

As the bench is aware, that decision inserted an enterprise bargaining principle in the wage fixation principles of the Australian Industrial Relations Commission.

Mr President, I do not intend to make lengthy submissions in this matter, mainly because the issues involved were covered at some length in the state wage case earlier this year.

As well, the full bench decision in that case rejected immediate access to enterprise bargaining for very largely the same reasons as the national wage case bench did in its April national wage case decision.

In state wage case decision the full bench said, and I quote:

> Only in extraordinary circumstances would it be desirable to settle upon objectives manifestly inconsistent with those of the Federal Commission in a National Wage Case.

Specially, in relation to enterprise bargaining the full bench said, and I quote:

> The concerns expressed by the AIRC are mirrored in this State.

Mr President, the national wage case decision at page 3 in looking again at those concerns says that, and I quote:

> Although the concerns expressed in our April decision have not been allayed we are satisfied that a further and concerted effort should be made to improve the efficiency of enterprises. In all the circumstances confronting us we are prepared on

balance to determine an enterprise bargaining principle.

The TTLC application in this matter reflects, with obvious changes, the enterprise bargaining principle so determined by the national wage case bench.

Mr President, as I said, I do not intend to go into lengthy submissions in this matter. Clearly by their own submissions the parties in both the national wage case and the state wage case this year support the move to a more devolved system.

Equally both the AIRC and this commission as demonstrated by the content of the decisions in those cases endorsed that approach.

The deferral of a move to enterprise bargaining in the federal commission was based on the national wage case bench's belief that there was insufficient consensus amongst the various parties ideas and objectives.

And, as I have said, the full bench in state wage case determined that the situation in Tasmania mirrored the national scene. As the full bench in the national wage case decision of October said it still holds those concerns. However, we would put to the commission that the view of the union movement is that that may well be an inevitable outcome of the concept of enterprise bargaining itself.

Our view is that it is up to the parties in industry to develop agreements which suit their own needs, and we do not see the necessity for a detailed set of prescriptions set in advance which potentially could restrict the very flexibility we are aiming for.

By that we mean, Mr President, and members of the bench, that in many respects the detail of how enterprise bargaining works, probably by its very nature, needs to be taken up between the parties at the enterprise level where agreement needs to be reached on a number of questions which immediately come to mind, and which I think we spent a great deal of time during the state wage case actually discussing.

Rather, what we see as necessary, is a mechanism be required such as outlined at pages 4 and 5 of the national wage case decision of October. The full bench said there at the bottom of page 4 that they sought to devise a mechanism which consistent with the inherent nature of enterprise bargaining.

And then there is four dot points:

> . will place the primary responsibility for achieving successful enterprise bargaining results on the direct parties;

. will require parties to abide by mutually agreed outcomes for a set period and to accept an on-going responsibility for reviewing the effectiveness of their agreement and for its renewal or replacement;

. will enable the Commission to have a conciliation role in disputes over enterprise bargaining and a role in testing the substance of agreements reached; and

. will give enterprise bargaining agreements the same legal status as awards.

Mr President, in our view, such a mechanism is an appropriate framework for enterprise bargaining to proceed.

The union movement would like to briefly put on the record, as we did in the state wage case, that enterprise bargaining will provide an opportunity for increased efficiency and competitiveness in industry to the benefit of the whole community.

I think, Mr President, you and the deputy president will recall in the state wage case how much of the TTLC's submissions were to do with the concept of enterprise bargaining being the next essential step following on from award restructuring structural efficiency exercises where in many respects it was a case of putting the words into deeds and actually seeing the results of improved productivity and efficiency, and the TTLC on that occasion went to some trouble to explain how we saw the importance of that, particularly in regard to the Tasmanian economy, where we are and will increasingly be, dependent on high quality production, not mass production of low quality items, but rather high value low volume items, which probably means that it is even more important in Tasmania for enterprises to be able to operate in the most productive and most efficient way possible.

As I said in those state wage case proceedings we did at some length discuss how enterprise bargaining was, if you like, the real front line of all the work that's been going on over the last few years which the union movement has been an active participant in. In fact, an active supporter of, working to make awards more relevant, to make work more interesting and varied, to make proper career paths available to employees, all with the aim of making industry more productive and efficient; and we do see enterprise bargaining as being the final link in that chain where the real results can be achieved.

And we would point out that those results are not simply a question of further wage increases being available to

employees, although from our point of view that is important. But we are talking about benefits which can accrue to the whole community, and particularly to employers and employees of more productive and efficient workplaces.

We don't change one word of what we said in the state wage case, and continue to pursue enterprise bargaining in that broader context, and with an eye to the opportunities that exist for both employers and employees and, as we've said, the whole community.

However, we do think it is necessary to put on record that that opportunity would be lost if employers seek a narrow view of looking solely at award condition trade-offs, and there is still some concern - I'd say, quite widespread concern in the union movement - that the potential attitude of some employers who only seem to think when it comes to enterprise bargaining of what work conditions employees should have to trade off in exchange for any pay increase.

And, in our submission, that really has nothing to do with enterprise bargaining. We are talking about looking at all sorts of issues to do with the way work is performed, and the workplace itself, and how the workplace is organised out of enterprise bargaining.

So, as I -

PRESIDENT: Do you, Mr Bacon, see the broad agenda being narrowed ...., if I understand it is a requirement for the parties to be able to show that a broad agenda is being considered in reaching agreement? Are you suggesting that conditions of service should be excluded from that agenda?

MR BACON: No. Certainly we are very keen supporters of the concept of a broad agenda for enterprise bargaining. We think that that question could well be addressed to some employers, none of whom I would expect would be present today, but certainly employers who see it solely as a question of conditions of employment are, in fact, looking at a very narrow agenda.

Our argument is that it should be a broad agenda. We're certainly prepared to look at those questions, but only in the context of a broad agenda, and that will raise other questions, as I said. Some to do with the management of the enterprise, and things such as occupational, health and safety that we discussed at the state wage case. All of these issues are, in our view, appropriate to be discussed as part of a broad agenda. And, it is in that context, Mr President, that we are prepared to look at the sort of matters that you raise. We are not prepared to look only at those matters.

To achieve the overall objective of a more flexible wages system will require a more open and consultative approach, and in this respect, Mr President, we are encouraged by the inclusion of Point (c), the matter you raised in the federal principle, and in our application, for the parties to demonstrate to the commission that they have considered a broad agenda in the development of their enterprise agreement.

The union movement, as I was saying, will certainly want to raise a number of matters on those broad agendas, and while we can clearly say that that will vary from enterprise to enterprise, depending on the conditions and the situation in that enterprise, we cannot think of any case where we would only look at the narrow sort of agenda which you raised in your question a moment ago.

We are confident, though, that if an open consultative genuine approach is adopted that the outcomes will enhance productivity and efficiency, and that aggregate labour cost outcomes will be appropriate.

We have that confidence for three reasons. Firstly, the fact that there is general support amongst the parties to both the national wage case and the state wage case earlier this year for enterprise bargaining.

I think the national wage case bench pointed out both in April and again in October that all the parties - or virtually all the parties - were endorsing this sort of more devolved approach. The differences were more to do with how it might take place and what conditions should attach, rather than the question of whether or not there was general support for enterprise bargaining.

Secondly, we would say that we are confident that it can achieve good results within appropriate outcomes, is that inherent in agreements is unions no extra claims commitments, because it is proposed that they be there for a set period, and that they clearly state what increases are available during the term of the agreement. They clearly would say what relationship there is to state wage case decisions or general movements in the community, and we would say that inherent in that is a commitment by the union entering into the agreement that there would be no extra claims outside of the terms of that agreement during the period of its operation.

And, thirdly, we'd say that this is all in the general context of the union movement's commitment, which has been expressed on numerous occasions through the ACTU, through ACTU Congress decisions, ACTU Executive decisions, and special unions conferences to responsible wages outcomes.

In the context of these factors the TTLC submits that it is appropriate for the Tasmanian Industrial Commission to allow

for similar access to enterprise bargaining as now set out in the federal principles.

The details of these agreements should be left to the parties. However, it is our strong submission tat the outcomes should then be tested by the commission pursuant to section 55 of the Act.

I think again, Mr President, you and the deputy president will recall during the state wage case the discussions we had about the role of the commission in enterprise bargaining.

The union movement I should say in this respect, particularly in Tasmania, is and has never supported a concept of enterprise bargaining that was totally removed from the Industrial Commission, and we in fact put during the state wage case the importance that we saw in the role of the commission in this whole concept of enterprise bargaining.

That is really in two respects. Firstly, in conciliating, in assisting parties to reach agreement, but also in actually testing the outcome of those agreements.

So that we would not see it as merely a passive rubber-stamp role for the commission, by any means. We would think that all the tests inherent in section 55 should be applied by the commission, and we would look forward to be being able to put forward agreements which would have no problems reaching those tests, and which would have no problem achieving the approval of the commission.

PRESIDENT: Before you move on from there, how would the commission get involved in conciliation? If there is no agreement there is no application under section 55, how would it get in front of the commission to start with, do you think?

MR BACON: Well, it could be - we would submit, Mr President - that there could be an agreement which wasn't entirely complete. That there was certainly agreement (a) that there would be an enterprise bargaining (b) on all sorts of matters to do with it, but there may be some items that required further discussion. The assistance of the commission could be sought then in the proceedings where the agreement was being put up on outstanding matters. We think that that would probably be the best way to go.

We certainly don't see it as the parties coming before the commission with no agreement at all, and then saying to the commission will you help us get agreement, because, I mean, we did discuss that at length in the state wage case, that the possibility of employers not wanting to enter into an agreement and, certainly, that is a possibility; but we remain committed to the position that, as I was saying at the outset, that enterprise bargaining is about improving

productivity and efficiency, and that there are benefits for both employers and employees, and that provided, as we said earlier as well, there is a general approach taken, a proper consultative approach, and with the attitude of trying to achieve those benefits which are available that in large part agreement can be reached.

I mean, it really - I suppose we'd say, putting it bluntly - you can't have it both ways. You can't say you want enterprise agreements, enterprise bargaining, and then say that every second day we will be off to the commission to try and get agreement for it.

I mean, it is really a contradiction in terms, and we are talking about enterprise bargaining which, by its definition, means that it is between the parties at the enterprise. Certainly there may be matters which are outstanding which the commission could assist in reaching agreement with.

PRESIDENT: Yes, I follow that argument.

MR BACON: And, certainly, the national wage case bench ruled out the possibility of any arbitral role for the commission in it, and pointed out that that is really counter to any possible understanding of what enterprise bargaining means.

We do believe that section 55 is the most appropriate way for this commission to deal with the potential agreements, Mr President. We do it because that section of the Act is designed to handle agreements. We think there are potential problems with awards or award mechanisms that are contained in the Act being used. For instance, there could be potential problems with how or whether you can establish a single enterprise award; what effect that would then have on existing industry awards, whether - I would think at the very least you would have to amend the scope of existing industry awards to remove particular enterprises. It would really be a messy, complicated way of proceeding.

DEPUTY PRESIDENT: Perhaps even illegal.

MR BACON: Perhaps even illegal, Mr Deputy President, and we certainly wouldn't want to put the commission into that sort of situation.

I think that when we looked at the Act and looked at this whole question it just seemed to us that section 55 was far and away the most appropriate and the most simple way that these agreements could be handled and, certainly, that's our submission to you.

No doubt, Mr President, you and other members of the commission, considering your heavy workload this year, will be relieved to know that I don't think - probably I don't think

anyone else in this room would believe that the commission if it grants this application will be immediately inundated with applications for approval of enterprise agreements.

We don't say that in any cynical way that it is not going to happen, but I think it is a proper reflection of what the facts of life are in Tasmania. There are not a lot a large number of enterprises which would be on the verge of concluding agreements which then could be brought to the commission and, in fact, I think there is only two which have so far been approved by the Australian Commission nationally. That would suggest that not only in Tasmania but elsewhere there will be some time before there are large numbers of agreements being put up.

And we'd say also that the delay in take up of previous wages systems that we discussed, and also the TCI discussed in the state wage case earlier this year, although there has been some improvement it still exists, and we went to great lengths on that occasion to look at the number of awards that have been varied going back as far as the 4% second-tier negotiations, 38-hour week, and all sorts of matters like that.

Now I think there has been some improvement, but no doubt members of the bench would know in better detail than I do what extent that improvement has been. The fact is that there are still a number of awards of this commission that are lagging behind and would not be in a position to take advantage of an enterprise bargaining principle, bearing in mind that in our application and in line with the national decision the first point in the principle is that the parties satisfy the commission that they have met the structural efficiency principle requirements prescribed in the state wage case decision of 13 August 1991.

Mr President, I don't have details of how many awards have now met those requirements, but it certainly is not all awards of this commission.

PRESIDENT: The percentage is certainly growing.

DEPUTY PRESIDENT: Every state service award has met the requirement.

MR BACON: I am aware of that, Mr Deputy President, and there are only a number of others, but while the number is growing it still not is 100%. So -

So, the point of all -

PRESIDENT: Do you interpret the phrase `meeting the requirements of the structural efficiency principle' to

include getting to the end of minimum rate adjustments? I just ask the question.

MR BACON: No, I wouldn't see it as that, Mr President, in fact it is said in that decision that has - a requirement was to have commenced minimum rate adjustments - or be prepared to do so in the immediate future.

Now, I don't know how many more awards we have got for minimum rate adjustments process going in, but I think there are some more since then. Certainly that's a matter of importance to us, but I wouldn't see that that process would have to be completed. Therefore, Mr President, whilst we have applied for the inclusion of an enterprise bargaining principle, we do not do this to the exclusion of any existing principle.

Equally, however, the slow pace in some awards should not prevent others from accessing the benefits of enterprise bargaining.

Again, we spoke of this in the state wage case, whether all should wait for others to catch up, or whether it is inevitable that there will be some delay with some awards, others should not be held up whilst those continue. (Too many cigarettes at Christmas parties, Mr President).

We urge the bench to continue the operation of other principles, and make particular reference to the structural efficiency adjustments allowable under the October '89 and August '91 state wage case decisions, and as we were just talking about, the minimum rate adjustments process, in accordance with the October '89 decision.

I should also say now, Mr President, and members of the bench, in line with statements that have been made not only publicly but in the proceedings of the national wage case of October by the ACTU, and that is that the union movement does intend to submit a claim in the first half of next year for a general wage increase based on maintenance of real wages.

We do that not because we believe that enterprise bargaining is not the appropriate way to go, but we do it in recognition of the fact that it may be some time off producing results for workers in many industries and in many enterprises; or rather, I probably should put that as in some industries and many enterprises.

At the same time, we think that there will be some industries, and certainly the metal industry is one example, which is relatively well advanced both in terms of understanding and in actually proceeding along the path towards enterprise bargaining, where they will be in a position to move relatively quickly.

However, the union movement while not moving away at all from anything we've said about enterprise bargaining, also recognises that there will be workers in some industries who will have at least at the best some delay in being able to access it, and at worse some severe difficulties in accessing enterprise bargaining; and for us to properly look after the interests of those workers we believe that the possibility of a general wage increase can't be ruled out; and, certainly, from our point of view and in line with the decisions of the ACTU Congress, we will be submitting a claim in the first half of next year.

Now as to the situation in Tasmania, I suppose in the normal run of things we will see what happens nationally before application was submitted to the Tasmanian Industrial Commission.

However, I think we should put on record here, both for the bench's benefit but also the other parties, that this is our intention, and we certainly would not move away from that.

PRESIDENT: That's - of course you are right to make those applications. Would there be any offsetting for those in those areas where there has been an enterprise bargain established?

MR BACON: I think that, again, would be a matter for the parties. I mean, there are obviously two alternatives. One is that an agreement could allow for general wage increases; the other is that it would rule those out, and the parties would have to make an assessment of what the result of that would be.

But, essentially, we would be talking about two different procedures and based on two different set of facts, if you like. That enterprise bargaining, as we have said countless times, is about productivity and efficiency, and we would be seeing that general wage application, general wage increase, would be based on CPI movements and not based on productivity improvements.

Now I think we can also say that certainly with recent CPI figures they always seem to have underestimated - overestimated, rather - the likely CPI figure in each quarter, that by the first half of next year any increase would be a fairly small percentage, and that would be what the claim is, based on CPI changes, but I think the important thing as to whether there - or what relationship that has to enterprise agreements, Mr President, depends on the understanding that we are talking about two different things, and ....

PRESIDENT: Yes, I note your model principle excludes general wage movements, but I was just interested to hear collaboration on that point.

MR BACON: Mr President, as I said at the outset, I have not made lengthy submissions, because the subject matter was discussed fully in the state wage case commencing at page 136 of the transcript through to page 169.

I should also, I suppose, say that Commissioner Imlach wasn't here on that occasion so he might want to make up for missing out on that opportunity, but there were a very large number of questions asked in those 30-odd pages of transcript.

Of course I am more than happy and prepared to answer any questions on this occasion, however I had hoped that with the exception of Commissioner Imlach who missed out on the opportunity, that other members of the bench may feel that they had adequate opportunity on that occasion to ask me questions .... this and we might escape relatively lightly.

DEPUTY PRESIDENT: I would have one - but bearing in mind the time of the year, Mr Bacon, I was only going to ask, in the event that your application was successful, what operative date would you be seeking?

MR BACON: Well, I suppose if we all really got stuck into it, we could have a decision this afternoon, Mr Deputy President.

DEPUTY PRESIDENT: Not after half past 4.00.

MR BACON: Well I think the date of decision, when ever that is - I mean we aren't talking about actual increases immediately going to people; it's a question of allowing for the possibility and setting a general framework and I think that the date of decision, which I'm sure would be before Christmas, would be more than adequate.

DEPUTY PRESIDENT: I've no further questions, Mr Bacon.

MR BACON: Thank you. I should say one thing about the application which must have been jet lag or something, Mr Deputy President, or anticipation of jet lag, but when I did this application, in point (g) it refers to long service leave with pay which of course in this state is a matter of legislation and not a matter for this commission. So, Mr President and members of the bench, in conclusion I'd simply urge the bench to grant the application and so allow great - access to the great potential benefits that are inherent in enterprise bargaining for both employees and employers. But as we've argued both at the State Wage Case and again today, more importantly for the entire Tasmanian community. Mr President, if the commission pleases.

PRESIDENT: Yes, thank you, Mr Bacon.

COMMISSIONER IMLACH: I have one, Mr President. Mr Bacon, what do you say of those awards that already have reference to agreements - sort of a precursor to this provision I think - should we leave them there or take them out?

MR BACON: Well I think certainly leave them there as some guide unless they are inconsistent with the proposed principle that we're putting forward, but I mean I think they result from discussions on an industry basis between employers and employee organisations. We think that that is a very sensible way of proceeding with enterprise bargaining - that in the first place the employee organisations and the employer organisation that's relevant to that industry, you know, outline some general ground rules, if you like, or general agreement about how it can proceed in that industry and provided there are nothing in those clauses - and I'm not familiar with all of them, certainly familiar with - I think it's in the Retail Trades Award there's a provision like that, I don't see anything in that that's inconsistent, just off the top of my head, Mr Commissioner, with what we're proposing.

And if the parties to an award which, as I was saying, really are the peak bodies in that industry, wish to set guidelines - additional guidelines - or clarify how it's to proceed in that industry then I think that's probably a good thing.

COMMISSIONER IMLACH: It might be the subject for a structural efficiency exercise later on mightn't it - to rationalise the provisions?

MR BACON: Certainly.

COMMISSIONER IMLACH: That's all, Mr President.

PRESIDENT: Yes, thank you, Mr Bacon. Mr -

MR HUNT: Mr President -

PRESIDENT: - Mr Hunt?

MR HUNT: - members of the bench, the Tasmanian Public Service Association supports the review of the wage fixing principles with a view to including the new enterprise bargaining principle. What I'd like to do first of all is support the statements which Mr Bacon has made, but I'd also like to make some general statements about the Public Service Association's view of enterprise bargaining in the public sector.

The PSA approach to enterprise bargaining on the - or productivity bargaining will be based on the following principles, and I'd just like to say as an introduction, that the public sector is a major contributor to the quality of life in this state, and that workers in this industry

represented by the TPSA are committed to maintaining and improving the role and quality of services contributed by the public sector.

And given this context, PSA members will continue producing outcomes which meet the objectives of the public sector and its organisations, and accordingly the PSA will make claims, subject to the inclusion of this principle for a share of the productivity improvements attained.

PRESIDENT: Could I just stop you there, Mr Hunt?

MR HUNT: Yes.

PRESIDENT: What do you mean make claims for a share?

MR HUNT: Well I use that term in a general sense, Mr President. We will discuss with the employer the possibility of employees receiving a share of the claims - of the gains made in productivity. So when I say claim, I mean in the general sense that it's normally referred to in industrial relations. There'll be an opening statement in the negotiations I would expect.

PRESIDENT: With the employer? It won't be a claim direct to this commission?

MR HUNT: That's right, that's right. The PSA sees the development of workers, their skills, and their partnership in decision making as integral to productivity improvements. Productivity bargaining in the public sector is about better servicing of community needs, therefore it's not about the assessment of individuals; its not a repeat of the second-tier wage round; and nor is it a trading off of jobs.

I'd also like to say, Mr President and members of the bench, that in the view of the PSA the State Service is the enterprise. That includes the agencies or departments and statutory authorities in the service.

The PSA believes that different productivity or performance indicators can and will be developed for various agencies and authorities, provided that the results of those performance indicators are pooled and that increases are paid to all as all employees are participants in the enterprise of the public sector.

And it's quite clear that with the diversity of agency programs, different measurement systems will be needed for different types of bargaining sub-units. For example, those that are able to generate a cash flow from their activities - the Forestry Commission; those where the service focus can not be measured in monetary terms - the Department of

Community Services; and those where they may be an overlap between cash flow and service delivery.

And that brings me onto the question of what the type of productivity measures we're talking about. We've already used the phrase `performance indicators', and that certainly is the focus which the Public Service Association favours.

It's typically said that productivity is output divided by input. Well it's our view that a narrow on output divided by input is unsophisticated and may only tell us the relationship between output and employment levels, and that there's a lot more to measuring efficiency and productivity in the public sector than trying to measure the output and the trying to put a value of some of the inputs.

It's very difficult to measure outputs of some State Service agencies like the Department of Community Services. Similarly, it's difficult to value public assets; for example, the North-West Regional Authority - we might need to value what the asset of the resource is - it's extremely difficult to do that sort of thing where we can get everybody to agree on the value.

Many of the outputs of the public sector can be described in terms which are somewhat abstract and in some cases it is difficult to put a market value on those outputs. So we favour a focus on performance indicators which may be in some cases outputs divided by input, but which go beyond that to comprehend broader considerations such as the effectiveness of government programs.

And so, Mr President, members of the bench, the PSA believe that there is a need to place an emphasis on outcomes as opposed to outputs. The government, through the public sector aims for particular outcomes for the particular effect of outputs on client groups and on target groups. And the outcomes of the public sector's initiatives and programs is the ultimate product of labour of public sector workers. And an assessment of those outcomes is more likely to be based on broader judgments and descriptive measures than precise number measurements.

Now if numbers are to be used in measuring outcomes, they will only be used as indicators of descriptive measurements or broader judges - broader judgments - rather than straight numbers.

When we were looking at the outcome of the labours of public sector workers we may be looking at the quality of service. That may be one of the performance indicators that we seek to measure in discussing productivity bargaining with the employer. That's of course extremely difficult to say, that the quality of service is six or two or any other number

unless we're referring to a descriptive judgment of that quality of service.

And you can also ask what techniques are going to be used to measure such things as the quality of service. Well we suggest that it may be useful to consult clients - to involve the clients in this sort of work; to get the views of consumer groups and assess customer and client satisfaction with the service that is being provided by public sector workers.

Work organisation performance indicators can also be developed. For example, the amount of time not directly spent on delivering service, increases in flexibility and skills and the effects of work reorganisation. Other related performance indicators may be employee satisfaction, innovation leave times and both of those are of course in the Rheem Agreement which has just been accepted by the federal commission.

The speed of decision making -

PRESIDENT: They obviously reached agreement between themselves as to what were to be the - what were to be the factors to be taken into account in measuring the productivity gain -

MR HUNT: That's right, that's right.

PRESIDENT: - and clearly you are going to have to do a lot of work with the employer to establish your bargaining rules.

MR HUNT: That's correct, yes. The speed of decision-making processes is also something else which might be an interesting .... indicated for the public sector.

Now, Mr President, you've just said basically what I was going to say, that performance indicators will have to be developed through extensive negotiations between the unions and the government and there may be service-wide indicators; there may be individual agency indicators; there may also be divisional indicators within those agencies and these would be monitored over time by agreed methods and where necessary, or where it was appropriate the commission might be involved in testing those outcomes or those results.

The review of these performance indicators would need occur relatively often so that there is incentive to improve services for employees to improve the performance of the services which they offer to the community.

The PSA believe that there needs to be open measurement and review of problems and discussions about rectifying problems in the delivery of services on a consultative basis. The PSA is also confident, Mr President and members of the bench, that the government and the ministering the service will be

interested in improving outcomes of the public sector labours and ensuring that the public service is more effective in achieving those desired outcomes. So we're sure that employer will want to discuss these matters with us, and I'd just like to restate one point that I made earlier, that as the State Service is the enterprise, the resulting increases which will flow from improved productivity in the public sector must be paid to all employees who are participants in the enterprise. If the commission pleases.

DEPUTY PRESIDENT: Mr Hunt, are you able to tell us whether or not there have been any developments in - in the state services of other states or the commonwealth along the lines you've just been suggesting? I think there was some public pronouncements earlier in the year about how the commonwealth state service, for instance, would apply the principles of enterprise bargaining. Has there been any progress do you know?

MR HUNT: If I could just take the question of the State Service first: I know that in Western Australia there are moves at the moment by the Minister for Labour for discussions to be held on how an enterprise bargaining agreement can be arrived at in the Western Australian State Service. I understand those discussions were to take place this week, but I haven't yet been informed of any concrete decisions that came out them, but of course those discussions are at a very much a preliminary stage. In the Commonwealth Public Service the picture is not quite as rosy as one might hope. The negotiations have broken down - it's my understanding anyway - between the public sector union and the government because the government simply pursued a negative cost cutting agenda on productivity bargaining which the public sector union believed it was not a very impressive showing by a government of that ilk. And so those negotiations have, I believe, broken down.

DEPUTY PRESIDENT: Thank you. Thanks for giving the information.

MR HUNT: If the commission pleases.

PRESIDENT: Yes, thanks, Mr Hunt. Mr Cooper?

MR COOPER: Mr President and members of the bench, in writing Tising to support the submissions made by the TTLC with respect to the enterprise bargaining document that's attached on the application, we would support all of those submissions excepting that we would like to, purely from a selfish point of view of respect to our union, dwell on the submission that Mr Bacon made with respect to general wage increases that are based on the maintenance of real wages, and we do that with respect to our organisation.

If you look at enterprises as such, our organisation represents members that would by virtue of their own employment constitute the total enterprise, and if we go to farms for instance, we have a lot of places on farms with one member constituting the enterprise, ... to us to then physically go out and activate on that farm. This principle, the work load in itself can be tremendous and the ability to do that would be somewhat limited. So with respect to those members, I'm emphasising the point with respect to the general wage increase.

General wage increase is one avenue that they have for actually achieving a wage rise, so with respect to the enterprise bargaining principle there are also difficulties that we would envisage this union having in implementing that part of the principle.

We do accept the need for the enterprise bargaining principle because we, along with Mr Bacon and other unions, accept the benefits that can arise out of that principle in that you can achieve productivity and efficiency but purely for the purpose of achieving productivity and efficiency and not to undermine any future wage rise that may be available to our members with respect to those industries that we can't apply the principle.

We'd also, in submitting to the bench, the principle that Mr Bacon has, ask that the bench fully consider the implications of (h)(ii) with respect to the agreement. We believe that -

PRESIDENT: In Mr Bacon's application do you mean or -

MR COOPER: Yes -

PRESIDENT: Yes.

MR COOPER: - in Mr Bacon's application with respect to section 55 of the Act being the appropriate vehicle for the agreements to be registered. And with respect to point (h)(ii) will not continue in force after expiry date unless renewed because the Act is quite specific in that, and it does say agreements once registered shall continue until a party retires from them either by notice of 30 days before the date of expiry or afterwards.

DEPUTY PRESIDENT: I suppose - and it's only a question - it would be possible for an agreement to state that it shall be for a set period?

MR COOPER: That's exactly the point I'm making.

DEPUTY PRESIDENT: Yes.

PRESIDENT: Yes.

MR COOPER: Exactly. So if by using that point, that's exactly - that's exactly the point .... In respect to the legislation, it's quite specific; with respect to this principle we would see those agreements doing just that - stating that they would continue to a point in time and then expire, and so I'm just alerting the bench to that fact with respect to the legislation.

So, in - in conclusion, I do want to keep my submission brief, it is merely to outline those points of Mr Bacon's submission that will affect us. We don't - we don't see that enterprise bargaining is an offsetting exercise with respect to general conditions and we do have problems with respect to some of our employees that do constitute the enterprise as such by being - by virtue of their employment.

So we would ask for the bench to consider that with respect to any future wage rises that the union movement will be seeking through a general application. If the commission pleases.

PRESIDENT: Thank you, Mr Cooper. I don't think you'll get a commitment from us on that at this point, but we note your submission.

MR COOPER: Yes .... thank you.

PRESIDENT: Mr Lane?

MR LANE: Mr President, members of the bench, I rise on behalf of the federation and the Institute of Senior Education Administrators, to support the thrust of Mr Bacon's submission this morning and in general terms what Mr Hunt in particular has had to say about productivity measurements within public sector enterprises.

However, I must state that the - and I must put on public record - that the federation and the institute do not agree that the state sector is - should be seen as the enterprise, and we reject and will oppose that being the case. Our position on this issue is based on two main yet interrelated developments. We believe the first development concerns recent changes in the structure and workings of industrial relations which have been initiated and are ongoing at the federal or national level over the last few years. And that move or development is that which is seeing the - or results in the industrial segmentation of the industrial relations operational structure.

That is, industries are being identified and clearly delineated and rationalisation of union coverage can then occur within that segment or industry. As a result of this, education has been clearly identified and accepted as an industry and moves are currently under way to ascertain appropriate union coverage in that industry. An example of

this was the decision of the ACTU executive on Tuesday which determined that the Australian Teachers Union is the principal union at the federal level in the teaching sector of that industry.

Within the next few months I understand decisions will be made regarding union status in relation to the clerical staff and teacher aides within that industry. The second development, which I'm sure you're well aware, is the intention of both the employers and the unions at the national level to seek a national benchmark salary rate for teachers.

However - you have heard of it, Mr President? Pleased to hear it. As you know, Mr President, it is one thing to attain such a salary situation, it is another to maintain it, and gain consistent salary outcomes. Consequently the state, territory and federal governments have along with the Australian Teachers Union decided to approach the question of salary levels in education at a national level. It is certainly the view of the standing committee of ministers which represents education departments and ministers, that education at a national level should be viewed as an enterprise. Consequently the notion of the State Service in Tasmania being viewed as a single enterprise we find to be unacceptable and it would certainly mean that the concept of nationally consistent outcomes and salaries would be virtually impossible to attain.

Consequently we request that if you feel the need to deliberate on this matter, that you reject any proposition which would define the State Service as a single enterprise. If the commission pleases.

PRESIDENT: Yes, thank you, Mr Lane. Mr McCabe?

MR McCABE: Thank you, Mr President. The - members of the bench, the application before you today, as submitted by the TTLC, seeks to review the wage fixing principles of this commission and establish new principles. The TTLC's application seeks the adoption by this commission of the enterprise bargaining principle recently ratified by the Australian Industrial Relations Commission.

In addressing the TTLC's application, the Tasmanian Government prefaces its position by stating that it sees enterprise bargaining being adopted in the Tasmanian jurisdiction as a natural and necessary consequence of the Federal Commission's decision to introduce this new principle as a result of its October 1991 National Wage Case decision.

In our view, the State and Federal Industrial Commissions will continue to play a crucial role in the proposed wage system. Although an enterprise bargaining-based regime is a move away from a more prescriptive and centralised wage fixing systems

of recent years, we see the commissions involvement as pivotal. This will be especially important in the transition from the current system to one which will focus on enterprise bargaining.

In supporting the transition to enterprise bargaining at the last National Wage Case, we drew the Federal Commission's attention to a number of considerations which were fundamental to our support for the new system. These were, 1) the unique nature of the Tasmanian economy, especially its inherent sensitivity due to the export-oriented nature of its production base; 2) the view that the private sector is the key to further employment creation in Tasmania and that an important role of the public sector is to facilitate such activity; 3) the prevailing and anticipated economic climate in Tasmania or the enhancement of productivity and cost efficiency through the finalisation of the structural efficiency process and development of the enterprise bargaining process; 5) the need to achieve equitable outcomes from both employees and employers within a most difficult economic climate, and 6) the need to develop a high level of cooperation between employers and employees within a framework in which all parties have confidence and which will provide benefits to all sectors of the Tasmanian community.

Against this background we advocated the introduction of an enterprise bargaining system which operates under a set of consistent well-understood and workable principles. We said that the principles established by the commission should include sufficient flexibility so as to permit parties to develop and agree upon enterprise specific criteria suited to the circumstances of each enterprise.

We also said that the commission should be responsible for the examination and ratification of all increases agreed to under the enterprise bargaining principle. Now, as Mr Bacon says, the - in his case, the government, for our part, went into some detail on the way it saw enterprise bargaining being introduced when it addressed the - this commission in the last State Wage Case .... this and pages 218 to 223 of transcript contain the relevant submissions by Mr Willingham who represented the minister on that day.

I do not propose to go over those particular submissions in detail, however, we said in part that, and I quote from page 218 of the transcript: We support, in principle, a carefully managed closely monitored transition to a wage fixing system which has as its central element wage increases linked to achieved improvements in productivity and efficiency.

Having addressed the State Wage full bench on our views on enterprise bargaining at that time, we asked that the bench defer introduction of the principle to preserve consistency with the federal decision, which, as you are aware, declined

to adopt .... principle in its April 1991 decision. In its decision in the State Wage Case of 13th of August this year, the full bench declined to adopt enterprise bargaining proposals, given the disparity of views of the major parties and the bench also mirrored the concerns expressed by the Federal Commission about adopting enterprise bargaining at that time.

Since then we've had a further review by the Federal Commission of its wage fixing principles which resulted in its decision of 30th of October this year in Print KO300. As we are well aware the Federal Commission has decided that it is now appropriate to give its imprimatur to enterprise bargaining.

In deciding to endorse enterprise bargaining the commission was again mindful of the pitfalls which could result from the adoption of this new approach without the parties having a clear understanding of how the system will work. However, the commission obviously feels that it has - it has to allow the introduction of a more decentralised system. This is encapsulated in the last paragraph of page 3 of the October decision, which says, and I quote: The submissions, that is on enterprise bargaining, again reveal a diversity of opinions and a failure to confront practical problems. Despite this the parties and interveners once more press us to move toward a more devolved system. Collectively they have left to us the task of translating a general concept into workable arrangements. There is little prospect, it would seem, that further postponement will lead to more fully developed proposals or to the resolution of points of disagreement. Although the concerns expressed in our April decision have not been allayed we are satisfied that a further and concerted effort should be made to improve the efficiency of enterprises. In all the circumstances confronting us we are prepared on balance to determine an enterprise bargaining principle. In deciding on the best way to proceed we have taken into - we've taken account of views of the parties and interveners and the need to limit the risks inherent in the approach chosen.

At pages 4 and 5 of their decision, the commission goes on to explain in dotpoint form the basis of the new principle and Mr Bacon has already run through those points so I won't repeat them.

But having detailed their concerns and aspirations for enterprise bargaining, the commission has set out the substance for the new principle which will govern the introduction of enterprise bargaining. The substance of the new federal principle is repeated in the TTLC's application before you today, which is modified to make the principle complementary with state legislation and the State Industrial Commission.

For its part, the State Government is satisfied that the new enterprise bargaining principle as sought by the TTLC is appropriate for adoption by this commission.

PRESIDENT: We've had a little omission regarding long service leave.

MR McCABE: Yes, Mr President, yes. Indeed the new principle is, in our view, compatible with our stated preference that there should be consistent guidelines and that agreement should be subject to the scrutiny and ratification of the commission. Our preference that agreement should only be approved on the basis of achieved improvements in productivity and efficiency still stands even though the Federal Commission did not specify this requirement in their principle.

The commission addresses the problems associated with measuring and distributing achieved productivity at the second-last paragraph of page 4 of its decision. It was also wary of arbitrating on the grounds of achieved productivity, given the possibility of aggravating flow-on effects with .... industrial disputes.

While we see the logic of this argument from the point of view of the commission, we would maintain our position that enterprise agreement should be based on demonstrable improvements in productivity and efficiency. We say that to allow agreements to be ratified on the grounds of expectations and promises is a dangerous, if not worse - is as dangerous, if not worse - than the problems which the commission discusses at the penultimate paragraph of page 4 of its decision.

So while we're not advocating that this commission should specify in its principle that it will only ratify agreements on achieved productivity, we say that the matter should be addressed in the bench's decision on this matter.

In considering this, the bench may wish to consider the statement made by the Federal Commission at page 4 of its decision at paragraph 2, where, at the second sentence it says, and I quote: Wage increases achieved through enterprise bargaining ought, in our view, to be justified by and commensurate with employees contributions to enterprise efficiency and productivity.

We would interpret this statement to mean that while an agreement may cover a range of agreed structural efficiency measures, those measures must be implemented prior to the payment of wage increases. While this stops short of requiring achieved improvements and productivity to be demonstrated, it does require the actual implementation of

such measures prior to payment. This requirement is reinforced in Part B of the new principles.

While this ensures that efficiency steps are implemented, it does not assure the consequential productivity outcomes. I suppose that therein lies a message for those who are considering venturing into enterprise bargaining agreements. We know that the Federal Commission has said that the primary responsibility for achieving successful enterprise bargaining results, rests with the parties. It follows therefore, that it is the primary responsibility of the parties to ensure that the terms of the agreement and the way they are to be implemented are given careful consideration prior to being put into effect. It would seem that if the proposed efficiency measures failed to deliver the forecast outcomes, then there is no apparent redress for the employer.

In regard to the question of productivity outcomes, the Industrial Commission of South Australia in its State wage case issued last week - in print I.115 of 1991 - had some useful comments to make and I would seek to table that decision as an exhibit.

PRESIDENT: We will mark this Exhibit MIR.1.

MR McCABE: I should point out that the wage fixing principles accompany the decision are not appended to it, but I am told they are virtually a mirror of the federal principles with only minor local variations. If I could quote from that decision at page 6, starting at the last paragraph and go through to the end of page 7, they say:

> However, we have reached the conclusion that, on balance, it is preferable that we should now adopt the Australian Commission's principle in relation to enterprise bargaining, so that at least part of the workforce in this State has the facility to enter upon that beneficial exercise. Another reason for acting now is that single bargaining units which may comprise employees covered by both Federal and State awards will operate at some enterprises.

I should just point out that there are some local problems in South Australia because of the nature of their jurisdiction where they are unable to cover all the people which are pointed out in the body of that decision. To return to the quote:

> We are concerned about a draft form of Enterprise Bargaining Agreement tendered by the United Trades and Labor Council (Exhibit U.T.L.C.). Whilst we acknowledge that that document is not expressed to be in any final form, nevertheless, in case it is

intended to be adopted for general use, we consider we should point out that, in our view, that document, as drafted, does not comply with the enterprise bargaining principle so as to justify any wage or salary increase. The agreement in its present form does nothing more than establish a mechanism for introducing at the enterprise level a Consultative Committee, which will consider some matters which are relevant to the enterprise bargaining principle. But, in order to warrant an increase in wages or salaries pursuant to that principle, real benefits will need to be demonstrated and agreed upon. The increases in pay should be commensurate with the employees' contributions to increased enterprise efficiency and productivity.

Enterprise negotiations should be aimed at improving the efficiency and competitiveness of the enterprise as soon as possible. There should be no limit to the agenda except within the constraints specified by the Australian Commission. There can be no uniform approach because no two businesses may be totally alike. Whilst some concepts may have some common application, there is a danger that the real benefits of this principle will not be properly achieved, if the negotiating parties do not consider the unique nature of each individual enterprise.

It seems to us that, in accordance with the reasoning of the Australian Commission, before this Commission approves any consent award or industrial agreement in relation to enterprise bargaining, which seeks to base increases in wages and salaries upon greater efficiency and productivity, the Commission should also be satisfied that the parties have agreed upon a method of testing, evaluating, and effectively measuring those increases in efficiency and productivity. It is imperative that, because of the fragile state of the economy, this particular principle must be strictly monitored and controlled, so that only where genuine improvements in efficiency and productivity have been agreed upon should the agreement be approved by this Commission.

Commensurate with the Commission's role of testing the substance of agreements reached, it will be appropriate for the Commission to require the parties to report back at an appropriate point or points in time to demonstrate that the increases in efficiency and productivity have actually then or

> are in the immediate process of being achieved.

And I end the quote there. So the South Australian Commission has adopted the federal enterprise bargaining principle with only minor variations to accommodate local conditions and legislation. However, they have taken, in our view, a responsible step in ensuring that the improvements in efficiency and productivity are well and truly tested by the parties prior to being included in the enterprise agreement, which comes before the commission for approval.

As the commission has said in the third paragraph of page 7, the commission should also be satisfied that the parties have agreed upon a method of testing, evaluating and effectively measuring those increases in efficiency and productivity. So clearly the commission is saying that the parties must decide between themselves how they are going to test, evaluate and measure a particular method which they are satisfied will produce genuine improvements. That will be no easy task for the parties in most cases, but we see this as being a minimal requirement and quite in accord with the federal commission's requirement that the onus for success in enterprise bargaining rests with the parties.

The South Australian Commission has also said in the last paragraph of page 7 that it would be appropriate for the commission to regularly monitor an agreements projected outcomes to ensure that they are actually being achieved. We say that such a system of testing and evaluation or similar requirements should be placed on the parties to agreements brought before the Tasmanian Commission for approval.

PRESIDENT: Are you seeking to vary the principle to that effect?

MR McCABE: No.

PRESIDENT: Or how would that be imposed?

MR McCABE: Well, I think the same way that the South Australian Commission has done it by noting it in their decision. I think that would probably be the best way of doing it if we want to preserve uniformity of principles.

PRESIDENT: Yes.

MR McCABE: Having made those comments, we are satisfied that the federal enterprise bargaining principle, as amended by the TTLC, is suitable for adoption by this commission. We are satisfied that section 55 of the Industrial Relations Act is a suitable vehicle for the registration and operation of enterprise agreements. Subsection 55(3) requires that the commission must take account of section 36 - public interest

matters - prior to it approving an agreement. In our submission those public interest requirements will be satisfied if the commission were to adopt the testing and evaluation requirements outlined - just outlined in my submission.

In regard to the life of agreements, we say that subsection 55(7) of the Industrial Relations Act presents the same problems as that identified in the federal decision, in that consent awards made under section 112 of the federal act need not expire at the end of their specified term and continue to operate unless there are specific provisions to the contrary.

Section 55(7) of our act says that agreements shall, subject to any award, continue in force unless parties formally retire from the agreement. Given the decision of the federal commission that an enterprise agreement shall be a fixed term and will not continue after its expiry date unless renewed, we recommend that the adoption - we recommend the adoption of paragraphs (h) and (i) of the federal principle, which will ensure consistent commencement and finishing dates for agreements. And I think the bench has already discussed the matter of including in agreements a clause which specifies the expiry date.

We would suggest that the opening paragraph of the TTLC's suggested wording for the new principle may need to be amended by deleting from the first line the words 'section 55 of the act' and substituting 'sections 55, 56, 57, 58, 59 and 60' of the Industrial Relations Act or, alternatively, Part IV of the act. Obviously section 55 does not operate in isolation to sections 56 to 60 of the act and for completeness sake this, in our view, needs to be set out in the principle.

PRESIDENT: Section 60, is that relevant? That is prior to the arbitrations, is it not?

MR McCABE: No, that is section 61.

PRESIDENT: 61, yes. So they are using -

MR McCABE: 55 to 60 -

PRESIDENT: So using Part IV might be misleading.

MR McCABE: Well, that is the problem of using a reference to Part IV in the fact that section 61 happens to be in there and is not relevant to - although it could be, I suppose - it could be relevant to agreements - private arbitration. Perhaps it is another method of accessing the commission.

PRESIDENT: That is possible. And I understand the submission.

MR McCABE: Briefly touching on other parts of the proposed principle, we agree with paragraph (a) and the prerequisite that the parties should have met the SEP requirements prescribed in the State wage case of the 13th of August 1991. We have already touched on our reservations concerning paragraph (b) and the need for achieved productivity gains. Having made those points, we endorse paragraph (b) in its present form. We endorse paragraph (c) as a necessary and integral part of the principle. Paragraph (d) of the proposed principle is acceptable, in our view, with the following reservations. We see the enterprise as being the enterprise of the employer, but with capacity, by agreement of all parties, for discreet workplace bargaining within the overall enterprise. We agree with negotiations being conducted through single bargaining units established at enterprise or workplace level. It is our only difference with the principle, is that negotiations at a discreet workplace or section of an enterprise should take place only by agreement between the employer and employee representative.

We agree with paragraph (e) with the comment that parties will need to be mindful of section 60 of the act, which specifies that provisions of an agreement prevail over any provisions of an award relating to the same subject matter. Should parties want to operate an agreement in conjunction with any award, they will need to be careful in drafting their agreements so as to avoid possible conflict and disagreement over the interaction of the provisions of an award and an agreement. We agree with paragraph (f) that there should be no further wage increases for the life of the agreement other than general movements in a State wage case.

Paragraph (g) presents no problems. In regard to paragraphs (h) and (i), we have addressed the matter of the life of agreements and operative dates earlier in our submission. We agree with paragraph (j) of the proposed principle, in that there should be concurrent and complementary agreements submitted to the federal commission where there are mixtures of State and Federal awards covering employees. We also agree with the concluding sentence, which places the onus for replacement or renewal of agreements on the parties.

I now wish to turn to the methods which might be adopted to give formal effect to enterprise agreements. We have said that we agree with the TTLC's draft principle, which identifies section 55 of the act as the principle vehicle for enterprise agreements. We would, however, reiterate our view put to the federal commission which was that we have no fixed views as to the most appropriate method of giving formal effect to agreements or arrangements reached through enterprise bargaining. We say there are a number of viable options available which could be considered - some of those, apart from registered agreements, are appendices to awards, enterprise specific awards and variations to existing awards

and no doubt there could be others. All these options would, of course -

PRESIDENT: Could I ask you a question about enterprise specific awards and could you explain to me what the view is in relation to enterprises, for example, which do not make up a total industry given the requirement of the commission to make awards for an industry?

MR McCABE: Yes, I had not given it particular - a great deal of thought and there could be -

PRESIDENT: This was touched on earlier and I think it was in relation to that. The Deputy President made a comment that it could be illegal -

DEPUTY PRESIDENT: I think the record will show that.

PRESIDENT: Yes. So that could be a bit of a problem in respect of making awards for enterprises.

MR McCABE: Yes, I need to give that some thought, I think, Mr President. Perhaps -

PRESIDENT: We are giving it some thought too.

MR McCABE: Yes. All these options, which I have just mentioned, would of course be by agreement and subject -

PRESIDENT: Could I just stop you again. You said, appendices to awards and enterprise awards - there was a third category, was there?

MR McCABE: Yes, variations to existing awards.

PRESIDENT: Yes, thank you.

MR McCABE: All those options would, of course, be by agreement and subject to having a fixed term of operation in the same manner as section 55 agreements and the same tests for evaluation of outcomes.

I now wish to move from the enterprise bargaining principle to other wage fixing principles handed down by the federal commission in its October decision. We would advocate the adoption of the new preamble to the principles, suitably modified to relate to this commission. The wage adjustments principle should be adopted as per the federal decision. The only variation from the current principle is to Part 2 - minimum rates adjustment to paragraph (c) - where there has been a modification to allow supplementary payments to be prescribed in wage clauses.

DEPUTY PRESIDENT: But we have already decided.

MR McCABE: A new paragraph (d) has been added in respect of supplementary payments. Existing State wage fixing principles differ from the former federal principles in that they require supplementary payments to be prescribed in a separate column in the wages clause.

PRESIDENT: We ruled on that actually in our August 13th -

MR McCABE: Yes.

PRESIDENT: - decision and allowed supplementary payments to be included in the wages clause as long as they were separately identified.

MR McCABE: Yes.

DEPUTY PRESIDENT: We thought it was a nonsense the way it was.

COMMISSIONER IMLACH: We fixed it up.

MR McCABE: Yes, totally agree. So we see no need to change that - the requirements of the present State principle and suggest that it continues unchanged. We see no need for change to the special cases principle, similarly no changes are suggested to the allowances or the superannuation principle. The work value principle has been varied by the federal commission in two places - the first is at paragraph (a) where the words 'or upgrading to a higher classification' have been appended to the end of the first paragraph. The second is at paragraph (e) where the final sentence has been omitted and a new sentence substituted. The rationale for these changes is explained at page 11 of the federal decision, which I will not read, but we advocate adoption of the same changes for the State principle.

The paid rates award principle has been changed in a number of respects. Paragraphs (b), (c), (d) and (e) have been added by the federal commission for the reasons detailed in the final paragraph of page 9 of their decision. The purpose of the inclusion is to spell out the need for maintaining the integrity of paid rates awards and for that reason we support their inclusion. The final change to the wage fixing principles occurs in the standard hours principle, which has been basically consolidated into a single paragraph without substantially changing the substance of the principle. We recommend the adoption of the principle in this form.

In summary therefore, members of the bench, the Tasmanian Government recommends the adoption of the enterprise bargaining principle as the basis for wage movements within the State industrial system. Indeed, the success of enterprise bargaining relies, in many cases, on the need for

consistent agreements which will cover employees working together under a mixture of State and Federal awards. A cooperative and coordinated approach between the Federal and State tribunals in application of the principle is therefore paramount to its success. We are satisfied that adoption of the new principles, including enterprise bargaining, is not contrary to the public interest. Indeed, if all parties adopt a positive, innovative and responsible approach to enterprise bargaining, it will ultimately result in positive gains for all Tasmanians. And in relation to operative date, I would concur with Mr Bacon's submission that the date of this commission's decision would be appropriate, if the commission pleases.

DEPUTY PRESIDENT: I will have to ask a few questions. Mr McCabe, you made reference to the need for the commission to test and evaluate agreements reached before endorsing them and adopting them, if an agreement is brought before the commission and all of the parties to it put their hand on their heart and in glowing terms attest to its value and attest to the fact that it has got all of the proper elements in it, what capacity has the commission got to get its nose into evaluating whether or not what it has been told, is strictly accurate?

MR McCABE: Well, I suppose if you take a line from the South Australian Commission, then the proposals being put forward by the parties must contain some meaningful measurement methods in the agreement and it will be up to the commission, I suppose, to satisfy itself that those methods of measurement and implementation of the efficiency methods are satisfactory. And, indeed, the South Australian Commission then goes on to say it is going to monitor the agreements to see that those outcomes are being achieved.

DEPUTY PRESIDENT: Yes, but we could hardly stand by people's desks in the Public Service and - with our little check board - it is a bit difficult to say to experienced advocates that, 'We don't believe you'.

MR McCABE: Well, I suppose if both parties come back to the commission and say they are satisfied with the way the agreement is working and that the outcomes are being achieved, well the commission can do no more than believe them, I suppose.

DEPUTY PRESIDENT: Particularly when they represent significant employers, significant unions and they might even represent a government of a State - telling us things -

MR McCABE: Yes, quite so.

DEPUTY PRESIDENT: Yes, it is a bit difficult, I think, to monitor.

MR McCABE: But I think those monitoring and performance indicators, if you like, which are built into - if they are built into the agreements and we say they should be.

DEPUTY PRESIDENT: I think you are right that it does say that the party shall give some details of the sort of things which have been or are being achieved. But my question really goes beyond that - what capacity does the commission have for really testing the assertions of all of the parties to an agreement.

MR McCABE: I guess it is really up to the honesty of the parties as to -

DEPUTY PRESIDENT: I guess we are pretty safe in this commission, because we can trust everybody.

MR McCABE: Yes, indeed, there is no doubt about that, Mr Deputy President.

DEPUTY PRESIDENT: Thank you.

PRESIDENT: Mr Hanlon.

MR HANLON: Members of the bench, on behalf of the minister administering the State service, we support the submission of the Minister for Industrial Relations and we just say that the bench, on this occasion, is being asked to approve a process - not to determine its view of an enterprise. A number of submissions have been put to you this morning, other than by the TLC, as to both what outputs and inputs could or should or maybe and to what an enterprise ought to be. We would say that that is a matter to the parties. The minister administering the State service certainly does not agree that it should be by way of union coverage or any particular occupational group, but that it is the industry of the Public Service. Those matters will be discussed between the parties at the appropriate time and should be left for determination at that time, and we would support the process that the parties have before you for approval as a mechanism to arriving at that point for further discussion. Thank you.

DEPUTY PRESIDENT: Mr Hanlon, how would you see enterprise agreements being presented to the commission and processed by the commission other than through the representation of the organisations party to an award?

MR HANLON: Well, the issue arising from the State service point of view is that we apply the terms and conditions of awards and agreements to all employees, whether they be members of unions or not. We only have awards applying to us - only agreements applying to us - and any arrangements we

have would either be dealt with by way of award or by registered agreement.

DEPUTY PRESIDENT: I am sorry, I might not have made my question clear. It was, how could any enterprise agreement arrived at be presented to this commission otherwise than through registered organisations?

MR HANLON: Well, I was responding to that question in terms of a minister administering the State service. The minister administering the State service does not have a view about other parties or persons who are not members of organisations as to how they may access the commission.

DEPUTY PRESIDENT: Well, would not the short answer be that there would be no access to the commission other than through registered - employee organisations?

MR HANLON: Well, I personally may say that but the minister does not have a view as it falls to the Minister for Industrial Relations as to who has access and the application of the act - the Industrial Relations Act.

DEPUTY PRESIDENT: Would the minister administering the State Service Act involve registered organisations in workplace discussions and at enterprises?

MR HANLON: As part of the current award restructuring, there is a process of consultation and there is already in place an agency consultative mechanism and there are further proposals being put by both parties to each other as to how consultation occurs under award restructuring. I would then assume that as time unfolds then there will be those forums for discussing matters. I do not really want to speculate. There is nothing proposed that we would deal with individuals as distinct from organisations.

DEPUTY PRESIDENT: Right. And finally, are there any enterprise agreements which are being negotiated at the moment in your area?

MR HANLON: Not in the State service.

DEPUTY PRESIDENT: No, thank you.

PRESIDENT: I am sorry, Mr Hanlon, I should have asked Mr McCabe, I think - I was intrigued by the reference to monitoring and it was interesting to me how the commission might monitor, I presume it is intended that monitoring arrangements would be inserted in an agreement.

MR HANLON: Well, one would assume that there is some way of defining what it is that has been agreed and what the outcome of that will be and what the measurement will be.

PRESIDENT: Yes, but it is slightly different from - there is the evaluation side of it and I understand that, but then there is a request for the commission to monitor and -

MR HANLON: I think that is being put to you in the public interest point of view. With the public interest - the commission should find in the public interest there ought to be a monitoring process then one assumes that we would need to build in a reporting mechanism and, in regard to the public sector, there are a number of ways in which - in a non-industrial sense - where reporting is carried out by a range of either the Parliament or statutory officers that either of a financial nature or a general reporting to Parliament as well as what the commission may require to ascertain whether or not the objectives have been met at the enterprise agreement. We have no objection to a monitoring process.

PRESIDENT: No, thank you. Mr McCabe, do you want to elaborate on that before we move off?

MR McCABE: That is the -

PRESIDENT: How you would see monitoring by this commission taking place.

MR McCABE: Yes, well, just going to the South Australian decision they say that it is appropriate for the commission to require the parties to report back at appropriate point or points in time to demonstrate that the increases in efficiency and productivity have actually then or are in the immediate process of being achieved.

PRESIDENT: So that would have to virtually be in any decision that was made about a particular agreement.

MR McCABE: Yes, I think it could be covered in the decision that accompanies the approval of the agreement.

PRESIDENT: Mr Edwards.

MR EDWARDS: Thank you, Mr President. Like other participants today, Mr President, I intend to be brief. I do not see there is much point in labouring with the subject matter of today's proceedings. As Mr Bacon has indicated in his submission, it has been the subject of much debate, both publicly within this commission as part of Mr Bacon's last State wage case application and, indeed, in the federal commission. I do not think any great purpose will be served in retraversing all that ground.

I can advise the commission that the TCI and the other organisations for whom I appear today, give support in general terms to the TTLC application that has been presented by Mr

Bacon. As the bench will be aware, in the August 1991 State wage case the TCI opposed the introduction of enterprise bargaining as part of an Accord Mark VI case, which was being prosecuted at that time by the TTLC. In our submission in that particular case, Mr Abey, who appeared for the TCI, enjoined the commission to adopt a view that was in concert with that adopted by the Australian Industrial Relations Commission and, that is, to reject enterprise bargaining at that point in time.

I think Mr Abey, from memory, was at some pains to take the commission to various passages in the federal commission decision, which said that they were not rejecting enterprise bargaining as a concept but were instead concerned that the parties were not sufficiently far advanced in their negotiations and understandings of the general principles behind enterprise bargaining to, at that time, put enterprise bargaining in place.

The TCI still hold to the view that it is appropriate for the commission to act in a manner consistent with the Australian Industrial Relations Commission and we therefore now support the introduction of enterprise bargaining which, we believe, should be largely in accordance with the TTLC application. There are a number of issues upon which we wish to briefly comment and these go largely to areas of clarification which, in our view, remain a little vague following the Australian commission decision in print KO300. Some of them have been touched on by other parties today and there are a couple that have not.

Before moving to those areas, there is one issue of substance that we do wish to touch on and it is a position where we believe the TTLC application differs from the principles enunciated by the Australian commission and it is one that has been touched on by Mr McCabe and indeed yourself, Mr President, in questioning. As the bench will be aware, the Australian commission allowed two mechanisms for the processing of enterprise agreements, those being sections 112 and section 115 of the Industrial Relations Act of 1988. Those two sections deal with registered industrial agreements on the one hand and consent awards on the other. The TTLC application limits the processing of enterprise agreements to a registered industrial agreement in accordance with section 55 of the Tasmanian act and we believe that limitation is unnecessarily restrictive.

This commission has, in the past, dealt with enterprise specific provisions within awards in a number of ways and Mr McCabe touched on some of them. They would include the addition of appendices to the award, which are company specific, and by way of an example I would instance the abattoirs award which has specific provisions relating to single companies appended to it. In addition to which, the

commission has dealt with the subject matter by way of differing wage rates which are company specific within awards, and indeed conditions of employment within awards which are company specific. And I give, by way of an example there just to remain consistent, the Abattoirs Award which prescribes a different pay rate for people on a tally system dependent upon which abattoir you work in - I use that one because it is one I am readily familiar with, Mr President, but there are many other examples as the commission would be well aware.

In our submission there is no compelling reason why this existing scenario cannot be continued and indeed utilised for the processing of enterprise agreements in appropriate cases. In our view, there is little purpose in freeing up the industrial relations system in this State only to do so in a rigid and inflexible manner by restricting access to enterprise agreements to those people who can execute a registered industrial agreement -

There are of course limitations contained in section 55 of the act, Mr President, and I don't intend to labour the point but the effect of prescribing section 55 as the only mechanism for processing enterprise agreements will have the effect of disenfranchising from the benefits of enterprise bargaining all employee or group of employees who is not a member of a registered organisation of employees. In that regard section 55, subsection (1) clearly states that a registered agreement can be reached between an employee organisation and on the other hand, an employer organisation or any employer or group of employers but there is no ability for an employer to reach agreement with his employees and register that as a registered industrial agreement before this tribunal because the employee party of the agreement must be a registered employee organisation - there is no other way of doing it.

PRESIDENT: And how would you see that happening in terms of an appendix to an award?

MR EDWARDS: The employer organisation to which the employer was a party, indeed he is, could make an application to vary the award and put in place an appendix. It doesn't need to have a signature from a registered employee organisation to achieve that end; all it needs is an application to get perform the commission. There are a number of mechanisms by which that might be achieved.

DEPUTY PRESIDENT: Wouldn't that application have to be made by a registered organisation?

MR EDWARDS: Yes, it would indeed and there are still limitations. What I am trying to do is remove one of those limitations, that is not to say there are not others. It is

not within my power, unfortunately, to vary the Industrial Relations Act -

MR BACON: Nor ours.

MR EDWARDS: and even if it were within my power I don't know that I would know how I would want it varied.

DEPUTY PRESIDENT: It's difficult enough for parliament to do it.

MR EDWARDS: I make no observation on that comment.

MR BACON: If there were enough people to take consistent positions on it.

PRESIDENT: You introduced that particular matter.

MR EDWARDS: I will ignore that subject matter Mr President. The TCI propose that the state commission follow the lead of the federal commission in this particular respect and allow the processing of enterprise agreements by more than just the restrictive mechanism of section 55, for the reasons we have outlined. As I said, I don't intend to labour the point of people who are not members of employee or employer organisations, but there are restrictions that are imposed by using section 55 which are overcome if there are other mechanisms. That does not mean all restrictions are overcome.

I wish to turn now Mr President to some of those grey or vague areas upon which we wish to make some brief comment in the hope or expectation that maybe the TTLC might make comment and clarify them or indeed the commission itself might be moved in its decision to make some appropriate contextual remarks which might tend to clarify some of the issues. The first such area that we wish to comment on is the concept of single bargaining units and how that term might be understood or indeed implemented at each enterprise. I say firstly Mr President and other members of the bench, that we unequivocally support the concept of using a single bargaining unit for the reaching of enterprise agreements. It has some inherent commonsense attached to it. However that term is not defined in any way in the Australian Commission decision and in our view requires some understanding to avoid possible conflict in the field.

It is in our submission an exercise in futility to interpret a single bargaining unit as being comprised of one or more representatives of each union represented at the enterprise. In our view that does nothing more than perpetuate the current situation which we believe is cumbersome and inefficient. In the case of some companies in this State, this could mean anything up to 10 or 15 unions, each separately represented, which does no more than enshrine the status quo and therefore

there is very little point in talking about single bargaining units. It would seem to us -

PRESIDENT: Surely what it would do would be to put all the parties who are going to be affected in the one room and -

MR EDWARDS: That is often the case now, it doesn't mean there is any consensus between the parties.

PRESIDENT: I understand that but what are you suggesting, that -

MR EDWARDS: If I could proceed a little further Mr President and if you are still unsure after I make the next couple of observations, please pull me up again.

PRESIDENT: I'll try not to Mr Edwards.

MR EDWARDS: Feel free, sir. It would seem to us in the prima facie sense that the concept of the single bargaining unit would tend to dovetail to some extent with the ACTU strategy of union representation wherein they outlined three criteria. Mr Lane from the teachers' federation to some extent touched on the process that has been taking place within the ACTU whereby the ACTU are designating unions within a particular industry as either the principal union, the significant union, or other union.

If our understanding that this single bargaining unit can be dovetailed to some extent with that process, it would appear that a single bargaining unit could prima facie be comprised of at most principal and significant unions with the principal union having the carriage of the case but a requirement to consult with at least the significant and, I suspect, with the other unions which would act to reduce the current cumbersome negotiation situations that prevail. As I indicated you can have up to 15 unions in a room and it is a little difficult to negotiate in those circumstances. In fact I recently had a case where about that many unions were involved in a structurally efficient exercise and between themselves they failed to agree on any one single point, as Commissioner Imlach is well aware.

We put this proposition of the ACTU strategy in the form of really a question to the TTLC and asked if Mr Bacon would care to comment as to whether or not the TTLC believed that is a appropriate strategy to deal with the question of single bargaining units and indeed whether or not they would be prepared to indicate their acceptance generally of the ACTU strategy. In any event if Mr Bacon is not so drawn, we would be interested in any observations the commission may feel like making in its decision and would obviously prefer if we could come out with some firm guidelines.

DEPUTY PRESIDENT: It may also be necessary to quote to comment on who should represent employers.

MR EDWARDS: It requires equal commentary Mr Deputy President,, I believe. I see nothing wrong with the commission making observations about representation of employers and enterprise bargaining negotiations. In fact I think it is a subject matter which could well be debated. We don't have a strategy in place the same as the ACTU one.

Mr President, the next matter upon which we wish to briefly comment is the requirement in the Trades and Labor Council proposed principle at (b) that wage increases are based on the actual implementation of efficiency measures. Again the Australian commission has not specifically dictated what exactly is meant by that phrase and obviously Mr McCabe has picked up on this point and to some large measure, addressed some of this issues I wish to raise. Certainly from my experience since the 30th October has led me to believe that there exists a variety of views on the correct understanding of that particular set of words and it seems to me each industrial relations practitioner you talk to has a slightly different understanding of what they might mean.

In our submission it would be appropriate and directly in line with Mr McCabe's invitation to the commission, for the commission to give some indication of its understanding of those words in the decision to save the time and trouble of parties approaching the commission only to find that they have a different understanding of those words. I think that is in line with the question asked by the Deputy President earlier. It is our view that the phrase clearly requires that the efficiency measures that give rise to the claim or the agreement to a wage increase under an enterprise bargaining agreement must be actually measurable and the South Australian commission has dealt with that in some detail - and I in large part agree with their conclusion - and must be actually implemented and be designed to effect real gains in productivity.

Whilst I know that interpretation is not necessarily one popular with the trade union movement, there are reasons for which we believe it is the appropriate interpretation. They include that the interpretation would see an end to the giving of promises in exchange for wage increases which has tended to prevail in some areas over a period of time and would place the onus squarely on the parties to an enterprise agreement to demonstrate the actual productivity improvement that they claim gives rise to a wage increase. This would also to some extent dovetail with the observations in the South Australian decision which have been put before you by Mr McCabe, that the parties can and indeed perhaps should be required to report back to the commission to report progress to ensure, as the Deputy President has already raised, that the promises they

have given, the measurement they have put in place and agreed upon, is in fact real, that it's not illusory and it's not merely people mouthing platitudes in order to obtain a wage increase not otherwise allowable under the principles.

In our view to adopt an alternate view would be to increase the risk of the shams that the Deputy President was concerned about or wage increases for productivity gains which do not in the end result materialise. I don't think any of us would support a system wherein wage increases could be given for an enterprise bargain in exchange for productivity improvements if those productivity improvements do not materialise. The real basis for the system we're putting in place is to increase the efficiency in productivity of industry, not to simply hand out wage increases.

One further area which we feel requires some comment is the methodology of sharing of productivity gain. We raise this issue to ensure there is no misplaced expectation that employees would receive by way of wage increase, the full benefit of any productivity gain achieved through an enterprise bargain and it hasn't been suggested to this point in time by anyone today that that would be the case. In this regard Mr President, I take the commission to page 4 of the Australian commission decision in Print K0300 in the large paragraph in the centre of the page wherein the bench made the following observation and I quote:

> The risks are increased by the uncertainties and disagreements which exist as to the appropriate assessment of wage increases negotiated at the enterprise level. Wage increases achieved through enterprise bargaining ought in our view to be justified by and commensurate with employees contributions to enterprise efficiency and productivity. In saying this we are not expressing an opinion that wage earners have no claim to benefit from the growth of productivity due to other causes such as the general advancement of technology and the growth of capital stock. It should be recognised however, that distribution of all of the benefits of productivity growth at the enterprise level would lead to inequity and ultimately to a distorted and unsustainable wage structure. Such a situation is compatible with neither a flexible labour market nor industrial peace.

In our view it is important to understand that part of the reason for basing wage increases on productivity improvement is to improve the general competitive position of each enterprise and thereby, as Mr Bacon has said, the Tasmanian and Australian economies. This cannot be achieved if the full benefit of productivity improvement is distributed as a pay

increase because therefore nothing will remain as a benefit to the enterprise. In our submission an equitable sharing arrangement must be negotiated at an enterprise level using the criteria spelt out in page 4 of the federal commission decision.

There are a couple of observations made by Mr Bacon which I believe require some minor consideration. Mr Bacon was at pains to place on the public record that he felt the process of enterprise bargaining could be imperiled if employers adopted a narrow approach to the agenda to be satisfied as part of an enterprise bargaining process.

Mr Bacon put the view of the TTLC that they are committed to the negotiation of a broad agenda and the point of view of the employer organisations I represent today, I am empowered to inform the commission that we too, believe there should indeed be a consideration of a very broad agenda. To do otherwise is to simply continue to pick at the edges and not get to the core of the problems. I think you, Mr President, put a question to Mr Bacon whether or not he was seeking the proscription of award conditions from the agenda and he replied that he was not. Indeed we see that award conditions should very much be part of the bargaining process but as Mr Bacon rightly points out, it is not the sole criteria to be contemplated.

Mr President, you asked a question of Mr Bacon as to how the parties might access the commission for conciliation proceedings in respect of matters they may be having some difficulty with as part of their efforts to reach an enterprise agreement. For what it's worth, I would indicate that I believe the parties can and maybe should access the commission in that regard, perhaps pursuant to section 29 of the act which would provide a forum for the parties to enter into conciliation proceedings before the commission. There is no obligatory arbitral role encompassed by sections 29 through to 31 and would enable the parties to utilise the conciliation role played by the commission. I understand your question arose as you saw it because section 55 would not allow the parties to approach the commission until in fact an agreement had been finalised, and I tend to agree with that view. As an alternative, there is of course section 29 and indeed if the commission is prepared to accept the observations we made earlier about not limiting access to the commission to only section 55, then there are of course other avenues opened up as well where an application could be made for the variation of an award, as an example.

PRESIDENT: Once it's in the hands of the commission, how do you proscribe the efforts of the member of the commission to resolve the problem?

MR EDWARDS: How do you proscribe them?

PRESIDENT: Yes, how do you limit them?

MR EDWARDS: How do you limit them - self restraint I guess Mr President.

PRESIDENT: I just think you could be running into some mysterious waters.

MR EDWARDS: Well, that's possible of course Mr President. I don't wish to go into any great detail of what I would think any particular member of the commission may do in those circumstances. The proscription would in our view, be provided by way of the principles. The commission has tended to try and apply the principles in a consistent manner and we trust that will continue. So given that, if the principles themselves provided the proscription, then I see that no member of the commission would seek to exclude - or to intrude into the area that is proscribed by the principles.

In respect of a question asked by Commissioner Imlach as to the standing of the structural efficiency or enterprise bargaining or enterprise flexibility clauses that have been placed in a number of at least Tasmanian private sector awards, we believe that they can indeed - the way they are framed - be the vehicle for the processing of an enterprise agreement. Now, as I would understand those particular provisions, they don't require that any agreement must be processed under section 55 but indeed indicate that any change to an award must be brought before the commission and it says so in the broad sense. It doesn't limit the options of the parties in accessing the commission to process an agreement reached on structural efficiency at an enterprise level. We see that situation should be continued and that is directly consistent with other observations we have made today.

In turning to the principles themselves, I think Mr McCabe has in large part, dealt with most of the issues that require to be commented on and that is that there is not only one change to the wage fixation principles which are embodied in K0300. There are indeed a number of other minor alterations which we would support this commission adopting. I understand the observation you made Mr President, that you have already picked up in large part that relating to supplementary payments. It is good to see Tasmania in fact leading the way, instead of having to follow.

PRESIDENT: We'll be able to quote you on that later, will we?

MR EDWARDS: Yes, indeed. In closing, Mr President, we wish to make the general observation that the proposed system which is envisaged by the TTLC application poses several real challenges to the parties and its success can only be assured

by a genuine commitment by employees, employers and their representative organisations to the underlying reasons behind the advent of the system itself. Short-sighted money grabs by either party can only imperil the system as will the application of duress by any party. The TCI for its part, accepts the challenge which is offered and hopes the TTLC and its affiliates will likewise grasp the nettle and make genuine efforts to make the system work for the benefit of the community as a whole and not just for individual sectorial interests.

The final comment I wish to make Mr President, is simply that I look forward to the invitation that it seems has been extended by the TPSA submission to comment on the performance of the commission in considering any enterprise bargaining agreement that may arise in respect of members of the commission. Being one of the clients of the commission it would be appropriate and I look forward to that opportunity. If you could bear that in mind as you decide whether or not to ask questions.

PRESIDENT: I think I understand that submission Mr Edwards.

MR EDWARDS: A pleasure.

PRESIDENT: Thank you. Mr Knott.

MR KNOTT: I'll also be very brief Mr President and members of the bench. AMMA is supportive of the TTLC's application to have inserted into the wage fixation principles, a principle relating to enterprise bargaining. As outlined in the state wage case proceedings in July this year, AMMA advised the bench that the mining and mineral processing operations in Tasmania have had a demonstratively successful record in enterprise bargaining. The majority of all mining and mineral processing industry establishment operate under enterprise awards so the concept of enterprise bargaining is not something that is foreign to our industry.

Through submissions to the federal commission over the past five years, AMMA has submitted that an enterprise industrial relations focus is imperative to ensure that outcomes are sufficiently responsive to the economic situation of individual industries or companies. When first advancing this back in 1986 before the federal commission, AMMA's views were discounted. I quote very briefly from page 3 of the '86 national wage case decision when AMMA was alone in pushing this approach. The full bench stated:

> The exception was Australian Mines and Metal Association Inc. (AMMA), which argued in some detail that assessment of capacity ought to take place industry by industry or establishment by establishment -

level. The Print number for that decision was G 3600. The full bench went on to say that comparative wage justice was a real force in industrial relations and it detailed problems at the time in regard to flow-on effects and possible industrial disputations flowing from such an enterprise-based approach. In short the full bench in discounting our submissions at the time made it impossible that these characteristics were, and I quote -

> - a far cry from the simple enterprise-oriented industrial relations system on which the submissions - appear to be premised.

Recent history reflects that in the October 1991 national wage case decision, the federal commission now has endorsed an enterprise bargaining principle and perhaps we were a little ahead of our time. But I think the important part of the October '91 national wage case decision is contained on page 13, where it states: The principles and process which we have determined provide for wage increases linked to measures for promoting productivity - sorry, promoting efficiency and productivity. Whether the gains in efficiency and productivity are achieved depends primarily upon the direct industrial relations parties and their ability to translate their commitments into appropriate outcomes - end of quote. Clearly that places the ball at the feet of the direct industrial relations parties.

The very nature of the negotiations that will stem from such a process will be that respective enterprise and efficiency productivity in efficiency matters will result in different wage outcomes. Now the nature of the industry in which we operate and the current situation is that we have to be competitive as we always have been in the world market sense and the world metal prices as you would be aware are not all that good at the moment, the high exchange rate etcetera. It would be sheer folly to suggest that greater productivity will automatically result in higher earnings at the enterprise because some companies are struggling to survive in the current environment and they have difficult in funding higher real earnings in the short term. So no doubt profitability will have some place to play in the negotiations. But the bigger picture however will undoubtedly facilitate a win win situation for all concerned.

When we were asked in the July proceedings about the $12 across the board type increase proposed in Accord Mark VI, we said that we were not supportive of such an approach. What it did, in our view, was to reinforce this something for nothing mentality. This together with a lucky country mentality is one of the reasons why the Australian economy has continued to falter. In other words, what we have been trying to do is to distribute more than what we simply have had. There is a

recognition by all concerned in our industry than more than commitment for changes are required. Change in commitments into appropriate outcomes is what has occurred in recent times in our industry and is what is required into the future. There is no magic formula to change the current situation.

There has to be a realism that working better, smarter and harder will inevitably pay off in the long term and higher returns will be available for all concerned. There may be exceptions from time to time to this rule, but as a whole, we cannot afford to sit back and watch our living standards erode. Should the enterprise bargaining principle be granted by the commission, it will facilitate a process that will bring about a wage adjustment process to the enterprise, i.e. an direct and obvious connection will be made between the contributions of individuals at the enterprise and the rewards they receive.

Accordingly Mr President and members of the bench, we submit that the state commission should grant the TTLC's application with the minor modifications that have been referenced earlier this morning and endorse the enterprise bargaining principle. To do so, we believe, is clearly in the public interest and will ensure a consistency of approaches adopted between federal and state industrial tribunals over this issue, if the bench pleases.

PRESIDENT: Yes, thank you Mr Knott. Mr Bacon, would it be stretching the bonds of friendship to pursue your reply at this stage?

MR BACON: No, it would not at all Mr President, I would be highly delighted. In fact I think it will improve our friendship, before lunch rather than other.

PRESIDENT: Anything that might do that Mr Bacon, would be wonderful.

MR BACON: There are only a couple of very - just a very few matters that I did want to comment. Firstly, in regard to the differing submissions put by two of my biggest and most favourite affiliates, the TPSA and the TTF, in relation to the view of enterprise in the public sector. I don't suppose it comes as any surprise that those two organisations do have a different view on that question and I think it would be true to say that many others of my affiliates who have members in the public sector, may well have different views as well. In fact at a meeting of unions the other day considering this state wage case, different views were expressed by a number of unions. However I would say, I think this question really is a matter between the employer and the various employee organisations. It certainly would have to be a threshold matter, if you like, the very first thing to be discussed and agreed on and clearly in the proposed principle that we have

put forward, there is provision in that within point (d) for a single bargaining unit in a section of an enterprise that the parties must demonstrate that the section is discrete.

So that does allow for - or rather the principles, if you like, allows for both possibilities and certainly that would have to be something which the TTLC will take up with its affiliates, certainly with the intent of getting an agreed position between all affiliates but thatmay not finally be possible. Certainly that would be our intention and then as Mr Hanlon suggested, we would be approaching the employer - in that case the state government, for discussions as to how it should all proceed.

Just quickly in relation to the comments Mr McCabe made about monitoring, I would say again that I think fundamentally that is a matter for the parties. I think the Deputy President asked a question of what attitude the commission should take if all the advocates for all the parties get up and say, yes, it's been wonderful and it's all working very well. Well, the commission has to act on the material put before it and if that is the view of the advocates, then I don't see that the commission is either able or in fact should go off on some sort of hunting expedition of its own by who knows what means to find out what is actually happening in the enterprise. If the commission had some reason for doubting the words of the advocates who come before you - I'm glad to see you're shocked Mr Deputy President - it would be, certainly there's no reason in this case, but if you had reason then surely that should be satisfied by questioning the advocates about it.

But as to a role for the commission in monitoring during the progress of an agreement, I think that that is a matter which could be included in the agreement, that there is a review after a period which could include a report back to the commission on the operation of it and I certainly wouldn't see any problem with that. In fact I think during the state wage case at one time we were talking about this and that suggestion was made, that regular report backs at six-monthly, twelve-monthly interviews, whatever, could be appropriate in some circumstances and that would then allow the commission to have a report from the parties on what the progress with the agreement had been.

In relation to the matters that Mr Edwards raised about membership of associations and the relative or the resulting question of whether section 55 is appropriate, I think really it depends on what sort of associations you look at as to whether it is a problem or not in relation to which section of the act because certainly section 55 talks about registered organisations of employees reaching agreement with individual employers. We don't move away one bit from suggesting that that is appropriate.

Equally, if we are going to start talking about awards, award variations, then it would be difficult to see how an individual employer who was not a member of a registered association, could make application to the commission for the award to be varied. If it was a situation, I suppose, where there were both the employer was not a member of a registered employer association and the employees were not members of registered employee associations, then certainly that would be a difficulty. We, on our side, say that yet again this is a very good reason why people should be members of registered employee organisations and we don't feel that it's our responsibility to move away from the fact that the act is set up in this way because it is aimed at encouraging registration of associations of both employers and employees and why on this occasion should we make different arrangements to allow for people who haven't seen fit to follow that sort of line.

So, we think that section 55 is certainly the most appropriate section of the act. As well, we would say though Mr Edwards and Mr McCabe talked about different ways of doing it through award mechanisms, we would say that all of them seem to us to be making awards more complicated and difficult to follow rather than the general trend which has been part of proceedings in the commission in state wage cases and so on for some years about making award simpler and more easier to follow and I think bearing in mind that we are now talking not just about some enterprises in an industry, but potentially all the enterprises in an industry having an agreement. If that was then to be transposed for instance to the suggestion Mr Edwards made about differing wage rates referring to different enterprises, it would be quite a ludicrous document that would certainly not be moving in the direction of a simpler and easier to understand awards.

The other matter that Mr Edwards asked was for the TTLC to express a view about the ACTU policy of deciding on principle significant and other unions in industry and the relationship between that and the single bargaining unit. I think I have said on other occasions, Mr President, in this commission and certainly we have said publicly in other forums on many occasions, that the TTLC in fact is a state branch of the ACTU. The policies and decisions which have been adopted by the ACTU have been done within, I suppose, reason, have been done with the involvement of Tasmanian union officials and myself as a member of the ACTU executive and prior to my being a member of the ACTU executive, other representatives from Tasmania being on that, we don't have any position which has been adopted by the TTLC in opposition to any of the matters that Mr Edwards raised.

However I think that as in the past, I should say that it is all very well to have policy and decisions taken by peak union councils, whether it be the ACTU or the TTLC. That does not mean on every occasion that every affiliate will follow that

policy and those decisions to the very letter and while we would always use our best endeavours to ensure that affiliates did act in accordance with ACTU with TTLC policy, there may be occasions where that has not happened and that is not something that we take lightly but we think it should be recognised because just because I stand up here and say, yes, we agree with the designation of principle significant and other unions adopted by the ACTU, does not mean that every affiliate of mine may agree with the particular case when it affects them. People obviously sometimes take a different view when it actually affects their own organisation than they do when it's looking at other organisations in other industries.

PRESIDENT: Wonderful feature of human nature.

MR BACON: Yes, and one of the more loveable things about people Mr President. Finally, both Mr Edwards and Mr McCabe spoke about demonstrating actual productivity achievements. We have no problem with that and our attitude to that and to achieving productivity improvements will - and to the adoption of a broad agenda and our participation in the whole process - will be greatly encouraged if the employers also take a good look at their activities in the past; at the way that they have run their business and the way they have or haven't involved their own employees in decisions which affect their lives and provided everybody acts in the new spirit of cooperation and consultation, then we are confident Mr President, that there will be extremely good results for the entire community. That is all that I would wish to put.

DEPUTY PRESIDENT: I just wondered if you would care to comment upon the other ways in which the principles were slightly varied. Have you told us your reaction -

MR BACON: Mr Deputy President, in - I mean my application was deliberately put as it was. I looked at the changes in the principles and compared them with the principles of this commission and we made the application as we did.

PRESIDENT: You wouldn't object to the proposed amendments as outlined by Mr McCabe and commented on by Mr Edwards?

MR BACON: Not in most respects Mr President. The only concern we had was in relation to the work value principle.

PRESIDENT: That was the upgrading to a higher classification.

COMMISSIONER IMLACH: Flexibility of section 55.

MR BACON: I think in point (E) of the work value principle in the federal commission, there is a change to the wording or an addition - the last sentence.

PRESIDENT: Yes, the last sentence has been replaced.

MR BACON: Concern was expressed to me Mr President by one affiliate that they weren't too sure exactly what that meant or whether it was quite clear and I suppose all we could say in relation to that was that if this commission felt so inclined they might express that differently or more clearly than is expressed there.

PRESIDENT: Thanks Mr Bacon. Thank you very much, decision is reserved, the hearing is concluded.

HEARING CONCLUDED