



# *Tasmanian Industrial Commission*

T No. 7702 of 1998

**IN THE MATTER OF** an application by the Tasmanian Trades and Labor Council to review the Wage Fixing Principles and to vary awards in a manner consistent with the Australian Industrial Relations Commission decision in Print Number Q1998 Safety Net Review - Wages

**FULL BENCH:**  
PRESIDENT WESTWOOD  
DEPUTY PRESIDENT JOHNSON  
COMMISSIONER WATLING

HOBART, 28 May 1998

**TRANSCRIPT OF PROCEEDINGS**

Unedited

**HEARING COMMENCED 10.45am**

PRESIDENT: Could we have appearances, please.

5 **MS FITZGERALD:** If the commission pleases, I think firstly I should start with an apology. I apologise for being late. We had the inevitable, unexpected problem with computers and had to resort to very antique technology to finish some preparations this morning. So, if the commission please, on behalf of the Tasmanian Trades and Labor Council, **LYN FITZGERALD** and **ROD HUNT**.

PRESIDENT: Yes, thanks, Ms Fitzgerald.

10 **MR C. WILLINGHAM:** Good morning, Mr President and members of the bench, **CLIVE WILLINGHAM**, for the Minister for Industrial Relations intervening pursuant to section 27 of the Act and also to the extent that the Minister for Public Sector Management has an interest in application T7702, I appear for him also.

15 PRESIDENT: Yes. Thank you, Mr Willingham.

**MR P. BAKER:** Sir, **P. BAKER**, on behalf of the Automotive, Food, Metals, Printing and Kindred Industries Union.

PRESIDENT: Thank you, Mr Baker.

20 **MS P. SHELLEY:** I appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Tasmanian Branch, **SHELLEY, P.**

PRESIDENT: Thank you, Ms Shelley.

**MS G. KITCHIN:** If the commission pleases, **KITCHIN, G.**, appearing for the Tasmanian Automobile Chamber of Commerce.

25 PRESIDENT: Thank you, Ms Kitchin.

**MR G. COOPER:** If the commission pleases, I appear on behalf of the Construction, Forestry, Mining and Engineering, Tasmanian Branch, **COOPER, G.**

PRESIDENT: Yes, Mr Cooper.

30 **MR I. PATERSON:** If the commission pleases, **PATERSON, I.**, appearing for the Australian Municipal Administrative, Clerical and Services Union.

PRESIDENT: Thank you, Mr Paterson.

35 **MR P. NOONAN:** If the commission pleases, I appear on behalf of the Shop Distributive and Allied Employees Association, Tasmanian Branch, **NOONAN, P.**

PRESIDENT: Thanks, Mr Noonan.

**MR R. FLANAGAN:** If it pleases the commission, FLANAGAN, R., for the Australian Workers' Union, Tasmania Branch.

PRESIDENT: Thank you, Mr Flanagan.

5 **MR C. BROWN:** If the commission pleases, C. BROWN, appearing for the Health Services Union of Australia, Tasmania No. 1 Branch.

PRESIDENT: Thanks, Mr Brown.

**MR J. GILL:** If the commission pleases, my name is JACK GILL and I appear on behalf of the Transport Workers' Union of Australia,  
10 Tasmanian Branch.

PRESIDENT: Very good, Mr Gill.

**MR T. CURTAIN:** TERRY CURTAIN, appearing for the National Meat Association, Tasmanian Division.

PRESIDENT: Yes. Very good. Thanks, Mr Curtain.

15 **MR I. MASSON:** If the commission pleases, appearing on behalf of the Australian Mines and Metals Association, MASSON, I.

PRESIDENT: Thanks, Mr Masson.

**MR K.J. RICE:** If the commission pleases, RICE, K.J., I appear on behalf of the Tasmanian Farmers and Graziers Employers Association  
20 and the Retail Traders Association of Tasmania, sir.

PRESIDENT: Very good. Thanks, Mr Rice.

**MR T.J. EDWARDS:** If it please the commission, EDWARDS, T.J., and appearing with me, **MR W.J. FITZGERALD.** We appear for the  
25 Tasmanian Chamber of Commerce and Industry, The Hop Producers Association of Tasmania, The Metal Industry Association of Tasmania, The Tasmanian Sawmillers Industrial Association and the Pharmacy Guild of Australia, Tasmanian Branch.

PRESIDENT: Good. Thank you, Mr Edwards. Ms Fitzgerald?

30 MS FITZGERALD: Could I hand up a letter that indicates that I'm also appearing on behalf of the Australasian Meat Industry Employees Union.

PRESIDENT: Yes, thank you. I think before we go too much further, I should indicate to you that the notice of hearing contained on it a  
35 couple of other applications made by the AWU, the AFMEU and I believe the Professional Scientists, et cetera. Those parties have since withdrawn their applications.

Very good. Ms Fitzgerald?

MS FITZGERALD: Thank you.

PRESIDENT: This is your exhibit book?

MS FITZGERALD: Yes.

5 PRESIDENT: Yes. Thank you, very much.

MS FITZGERALD: So, you have before you, at exhibit 1, our application - the application of the Trades and Labor Council to seek to review the wage fixing principles of the commission to vary the awards in a manner consistent with the Australian Industrial Relations Commission's decision in print Q1998, Safety Net Review Wages.

You have at exhibit 2 - divider 2 - do you have a problem?

15 MR EDWARDS: I'm just trying to discover. Mr Hunt was asking me whether I had copies of these things and I just said, I am not aware of what's in the exhibit booklet, so I don't know.

MS FITZGERALD: You will have.

PRESIDENT: Okay. Yes, proceed?

20 MS FITZGERALD: At divider 2, exhibit 2, you have - and Mr Edwards now has a copy of an outline of my submission and I intend to address the first item, which is the detail of the ACTU living wage claim and you have that in your folder at exhibit 3.

As it says, the living wage claim before the full bench of the AIRC -

PRESIDENT: Before you get too much further into - this is your primary submission you're about to make?

25 MS FITZGERALD: It is.

30 PRESIDENT: Could you inform bench as to the extent to which you've been able to pursue your negotiations with the other parties? I'm not asking you for any detail as to what positions you might have reached but whether or not the negotiations were exhaustive and that there was no chance of any success.

35 MS FITZGERALD: Certainly. We have met with the TCCI, who indicated at that meeting that they were authorised to speak on behalf of all registered employer associations. We met with them and they put a proposal to us which is somewhat different to the decision of the AIRC. We considered that proposal and went back to them with a counter proposal.

5 The TCCI, after consideration of that, then put a subsequent proposal to us, which was not acceptable. Our assessment of that was that there was too greater difference between us to reach agreement and so we are proceeding today to put our submission and have the commission arbitrate on this matter.

PRESIDENT: Yes. So, the negotiations were, principally, with the TCCI?

MS FITZGERALD: Yes, they were.

PRESIDENT: Was the government involved?

10 MS FITZGERALD: I've spoken to the government in terms of what their position might well be and I'm not aware of what that is at this stage but they certainly were informed of the various stages that we were at in discussions with the TCCI.

15 PRESIDENT: Yes. Do you think there is any chance of reaching a mutually agreed settlement, if you were invited to resume negotiations?

MS FITZGERALD: On the basis of what the TCCI lastly put to us, no. If the TCCI have altered their position substantially, then there may perhaps be some possibility of an agreed outcome.

20 PRESIDENT: Yes.

MS FITZGERALD: I've had no communication with the TCCI since my letter to them and so I presume there has been no change in their position.

25 PRESIDENT: Yes. Well, I really don't want to stop you in your submissions but I feel I must ask the employer representatives -

MS FITZGERALD: Perhaps the question is more appropriately directed -

PRESIDENT: - what their views are on the possibility of some success being achieved by way of negotiation.

30 Mr Edwards, do you care to inform the bench as to what you think might be the prospects of success by way of further negotiations?

35 MR EDWARDS: It is very difficult to predict, president, obviously, but I must admit I was surprised to hear the TTLC description of the substantiveness of the differences between us. I must admit, I may be looking at it through rose coloured glasses but I didn't personally detect that the difference was so vast. However, clearly, from their perspective, that appears to be the case.

I can advise that I received correspondence from the Labor Council, which I received on Tuesday of this week which indicated that our counter proposal had not been acceptable to them and indicating their intention to place their submissions before you today and I suppose  
5 it's for that reason that I didn't raise further with the TTLC the prospect of a resumption of discussions, principally because no such approach was invited.

Whether or not conferences may be successful, would remain to be seen. It's certainly been the case in the past where the parties have  
10 been pulled back from the brink of substantially falling apart to reach an agreement, so I wouldn't say there is no prospect. There are certainly differences between us. Whether they can be ironed out in a conference and maybe with some assistance from the bench, I don't know.

15 In answer to your further question to Ms Fitzgerald, in the anticipation you may put the same question to me, we have no discussions with the government about the position we have adopted to date in respect to this application. Our discussions have been entirely with the Labor Council, as the applicant, and at their invitation which we believed to  
20 be in accordance with the decision of the commission at the last State Wage Case, where on the last page of that decision you enjoined the applicant parties and the principal employer organisation to conduct the vast bulk of the negotiations between themselves, which we've done.

25 We have certainly kept other registered employer organisations fully informed of every step we've taken in the process and I believe that they are as one with us at this stage. So, having said all of that, the short answer is, it may be worth exploring. I didn't think the difference was as vast as it seems the TTLC did, so I might be interested to learn  
30 why they think that chasm is so vast, if nothing else. If it please.

PRESIDENT: Yes. Before I ask my colleagues what their views might be on such an approach, I must say from my own point of view, I wouldn't want a conferencing process to be seen as a means to further  
35 extend or delay any decision making in the process and so, if the parties are agreed to go into conference and if my colleagues agree that's appropriate, then I think we would have to put some fairly strict time lines on the time it takes to conclude those negotiations.

Just bear with us for a moment.

40 Yes, thank you. Is there any party present which is opposed to being invited to go into conference?

MS FITZGERALD: Can I say something, please?

PRESIDENT: Yes.

MS FITZGERALD: We entered the discussions with the TCCI in good faith and at our last meeting we put a position to them, that I indicated was a final position. It wasn't about brinkmanship or one-up-manship or playing games, it was quite genuine - that we wanted  
5 to have genuine discussions and if possible reach an agreement but we were quite clear about the bounds within which we were agreed that was possible.

We put that position to them and they then came back to us with a subsequent position. Now, on the basis that the position we put was  
10 our final position. It was not about pushing out and reconsidering that. They came back to us with another offer, knowing that we had put our final position. So, I must admit that I don't actually think there is any value in further discussions, unless the TCCI can indicate that they in fact accept the position we put to them at our last  
15 meeting.

PRESIDENT: Well, that's pretty blunt.

MR EDWARDS: Well, all I can respond, president, and you won't be surprised, I don't think, is that I don't intend to indicate on the record what position I might adopt if there's a conference. That would be  
20 lunacy. I'd be guilty of the same things I accused a number of other parties of doing the last time we were before you in a State Wage Case and I don't intend to do that.

I would, before taking a position in that conference if there were one, I would confer with the other employer organisations that are here, to  
25 see what position they may care to adopt in respect to the discussions and it would be as a result of those discussions that we would determine a position which we would put to the Labor Council.

PRESIDENT: Yes.

MR EDWARDS: I certainly don't intend to be dictated to, to the  
30 extent where I'm told what position I have to adopt before anyone will talk to me.

PRESIDENT: Yes. How long do you need to talk with your -

MR EDWARDS: Five minutes, I suspect, president. I'm certainly not about delay. I'm ready to proceed to hear the TTLC's submission, but  
35 with that in mind - I'm beastly careless whether we have a conference or not but I'm certainly not going to be told what the position has to be that I adopt on the record before I even go into that conference.

PRESIDENT: Yes. All right. I understand that. Well, we'll adjourn to allow you to have your discussion with the employer representatives,  
40 Mr Edwards and we'll resume at 11.10. Thank you.

**SHORT ADJOURNMENT 11.00am**

**HEARING RESUMED 11.10am**

PRESIDENT: Mr Edwards?

MR EDWARDS: Thank you, president. The report will be extremely short and I am instructed that the employer organisations that are  
5 here in the commission today, believe there would be some merit in meeting further with the TTLC, if only to clarify a couple of issues and maybe to sort things out, who knows, but that's the position I've been asked to put.

PRESIDENT: All right. Thank you. Well, it looks as though there is a  
10 request to enter into further discussions with your organisation, Ms Fitzgerald.

MS FITZGERALD: I think we could probably do that but I don't think it will take very long.

PRESIDENT: Let's not leap to those conclusions just at this point.  
15 When do you think then, Mr Edwards, you might be able to get back to us, or how long do you think this discussion might need?

MR EDWARDS: I'm receiving instructions, 15 minutes. That looks like all the entertainment I'm going to get. Let's try 15 and -

PRESIDENT: Yes. And then can alert -

MR EDWARDS: - if necessary we can advise but I'm quite happy to  
20 try 15. I really agree with Ms Fitzgerald's assessment that it's not going to take long.

PRESIDENT: Yes. All right. Now, in terms of who should be attending the meetings, or this meeting? I think it would be a bit  
25 cumbersome if everybody is to be involved. Can you represent the union parties, Ms Fitzgerald?

MS FITZGERALD: I think it would be appropriate if there were others present as well, so I'd suggest Phil Baker and Pauline Shelley.

PRESIDENT: Yes. Mr Flanagan?

MR FLANAGAN: Mr President, the AWU is not an affiliate to the  
30 Trades and Labor Council and in those circumstances we'd seek to participate in those discussions.

PRESIDENT: Yes. Any objection to that, Ms Fitzgerald?

MS FITZGERALD: I guess not.

35 PRESIDENT: No. All right. And for your side, Mr Edwards?

MR EDWARDS: It looks like I've just been advised, I've got to carry the can on my own.

PRESIDENT: You're on your own.

MR EDWARDS: But it will be a representative delegation.

5 PRESIDENT: Yes. Mr Willingham?

MR WILLINGHAM: No. I think I'd pass any opportunity to participate at this stage, Mr President.

PRESIDENT: You'll pass?

MR WILLINGHAM: Yes.

10 PRESIDENT: The government's position might be useful.

MR WILLINGHAM: I would certainly hope so, Mr President, but it may be that everyone's position is better served if the parties have their attempt at solving outstanding issues between themselves first.

15 PRESIDENT: Yes. All right. We'll adjourn for 15 minutes with those parties identified attending the conference and we would want you to know that if you need extra time to pursue anything, then the bench would be prepared to grant that extra time. If you can reach an agreed position, so much the better.

We'll adjourn.

20 **INTO CONFERENCE 11.20am**

**HEARING RESUMED 3.35pm**

PRESIDENT: Ms Fitzgerald, do you have something to report as a result of a fairly extensive conferencing period which has extended until the best part of 3.30?

25 MS FITZGERALD: A rather longer 15 minutes, than was anticipated, yes. Thank you. **(Break in audio tape)** - and your attempts to allow us to spend the time reaching an agreement and I advise that we have in fact done that - reached a position that we are both comfortable with.

PRESIDENT: Very good.

30 MS FITZGERALD: So perhaps to explain that to you, it's easiest by giving you a copy of the draft amended wage fixing principles. We've had some difficulties yet again with technology.

PRESIDENT: We have -

MS FITZGERALD: I don't know that you've actually got the one that I've got, have you? You need to have the latest one.

MR EDWARDS: Mr President, if I could suggest, if we go off the record for just a moment and I'll perhaps explain what's occurred.

5 PRESIDENT: Yes. All right. We'll go off the record.

**OFF RECORD 3.36pm**

**ON RECORD 3.37pm**

MS FITZGERALD: So, the first change is not substantial and rather just, less cumbersome than what presently exists.

10 PRESIDENT: Before you go too much further, we already have an exhibit 1, don't we?

MS FITZGERALD: You do have an exhibit 1. This would have to be about -

PRESIDENT: **EXHIBIT 7.** My apologies. Yes. Sorry, Ms Fitzgerald.

15 MS FITZGERALD: So the first changes in terms of 2 - Structural Efficiency and you will see that what we have done is take out the previous T numbers. In the case of last year's State Wage Case there would have been, I think, fifteen T numbers to insert so rather than the T numbers we've just replaced those with the appropriate dates. A  
20 quite simple change.

The next change, which goes more to the agreement reached between us, is 7 and that deals with previous state wage increases. There is no change to 7.1, that is as was. 7.2 is different and provides for  
25 increases regarding minimum rates adjustments, minimum rates adjustment process or the structural efficiency process shall be determined by agreement between the parties to any particular award or failing agreement, by decision of the commission.

So that particular clause just deals with increases as a result of minimum rates adjustment or the structural efficiency process.

30 In terms of dealing with the safety net adjustments, 7.3 is a new clause and firstly deals with the application of any outstanding safety net adjustments into an award, in accordance with 7.1. They will be available by application on or after 1 September 1998.

35 Now, in terms where there is an application to vary an award for more than one arbitrated safety net adjustment, we've addressed that by saying, as it says, in respect to an application seeking to vary an award by more than one arbitrated safety net adjustment. The spacing of those increases shall be determined by agreement between the

parties to the award or failing agreement, by decision of the commission.

PRESIDENT: Yes.

5 MS FITZGERALD: Then 8, in arbitrated safety net adjustments, goes to the way in which in this particular instance we have agreed to address the flow-on of the safety net adjustments to state awards. As you can see, what we have agreed to do is to split the increase in this respect. So, where you had an increase in the federal decision of \$14.00 for award rates of up to and including \$550.00 per week, what 10 has been agreed is that, that will be phasing in of \$10.00 and \$4.00, \$10.00 from the 14th July, \$4.00 from the 14th October and subsequently with \$12.00 for award rates above \$550 and up to and including \$700.00 per week by way of a payment of \$9.00 14th July and \$3.00 14th October and above \$700.00 per week, \$10.00 by way 15 of a payment of \$8.00 on the 14th July and \$2.00 on the 14th October.

PRESIDENT: These are weekly rates?

MS FITZGERALD: Yes, they are.

20 COMMISSIONER WATLING: And when we talk about the 14th July, we're talking about the precise day, 14th July, not the first full pay period?

MS FITZGERALD: No. Actually, there's -

COMMISSIONER WATLING: Oh, after -

25 MS FITZGERALD: - a clause to deal with that, yes. And as it says at the bottom of that, which is consistent with what we had last time, where the draft orders are not completed and agreed by 14th July, the operative date will be the date that the commission approves the draft orders.

The next clause, 8. 2 -

30 PRESIDENT: Could I ask a question that arises from that and we have experienced it before under the previous principles. You've used the word, agreed, there in that last paragraph - that last sentence. That's agreed between the parties -

MS FITZGERALD: Sorry, which sentence.?

35 PRESIDENT: The last sentence.

MS FITZGERALD: Of where?

PRESIDENT: Page marked 5. It's 8.1. Where draft orders are not completed and agreed -

MS FITZGERALD: Yes.

PRESIDENT: - by 14th July. Now, are they required to be in the commission by the 14th July?

5 MR EDWARDS: Perhaps if I might assist, president. It's something I have had experience with from the last occasion -

PRESIDENT: Yes.

10 MR EDWARDS: - and therefore perhaps I might be able to speak with fractionally more authority. From the point of view of the TTCCI, the position we adopted last time was that where the draft orders had been provided to us and were found by us to be correct by the 14th July, that we would advise the commission that agreed draft orders had been received by that date.

PRESIDENT: Yes.

MR EDWARDS: If that clarifies it.

15 PRESIDENT: It does.

MR EDWARDS: Thank you, sir.

PRESIDENT: Is that your understanding, Ms Fitzgerald?

MS FITZGERALD: Yes, it is. I understand.

20 So, 8.2 remains as is. There is no change. 8.3, there is a change. There is a deletion of the words, the \$10.00. So, instead of incorporating the \$10.00 safety net adjustment, it provides for a public sector award that has not been varied to incorporate increases from enterprise bargaining for an application to be made to incorporate - or an application may be made to incorporate safety net adjustments.

25 PRESIDENT: Yes. We'd better include the words, safety net, in there.

MS FITZGERALD: Yes, you do. Sorry, I apologise. So, safety net, prior to adjustments.

PRESIDENT: Yes.

30 MS FITZGERALD: Now, in terms of the form of orders, there's an additional clause, 9.5, because in this instance the way in which we have dealt with the safety net adjustment, our intention is there be a single draft order which will embrace both components of the increase and perhaps it's appropriate to suggest at this time, or to seek some assistance from the bench, to give some direction to the parties as to  
35 how Clause 8 - Wages may in fact be laid out. It might be useful to allow for some consistency, for you to provide us with some direction.

PRESIDENT: Yes. We'll have a look at that, if we get to that stage. Thanks, Ms Fitzgerald.

MS FITZGERALD: Thank you. Under allowances 10.1.3, is an additional clause. There will be an increase in allowances flowing from this decision - this agreement and there's a change to what you have in front of you. Increase to existing allowances as a result of the July 1998 State Wage Case shall be applied in one instalment and insert the words, from 14th July 1998.

PRESIDENT: I take it, in all cases, this is the first full pay period on or after?

MS FITZGERALD: Yes.

PRESIDENT: Yes.

MS FITZGERALD: That's the only change there. The only other change is in terms of 16 - Award Review Process - 16.1, and there's a change required to the copy you have in front of you. Again, what we have done is removed the T numbers and just rely on the relevant dates but there is an error. It should read: Consistent with the decision of the Tasmanian Industrial Commission in the July 1996 and the July 1997, rather than 8, and then the words, State Wage Cases, need to be inserted. The parties are to continue to pursue their commitment to review awards, et cetera, and what has been deleted from 16 - Award Review Process is the previous clause that provided for the bench to convene a meeting of the parties or a conference to determine a consistent award format and that matter has been addressed.

I would like to make some comment in terms of the agreement that has been reached. The ACTU Living Wage Case quite clearly - their claim was based on the right of all Australian workers to a decent standard of living and in particular to address the needs of low paid workers, workers with limited or no access to over-award payments, workers with no access to workplace or enterprise agreements and workers at the lower end classifications.

We all know that low paid Tasmanian workers are struggling to make ends meet, going without basic necessities, renting accommodation and having inequality of opportunity. Our approach in this matter has been to achieve as greater benefit as possible for these low paid workers as quickly as possible. This agreement is thus entered into on the basis of pragmatism.

Whilst we were obviously ready to run our full case for arbitration, we accept that the outcome of seeking arbitration may have been that low paid workers would not get any increase at all for some considerable time. We are pleased with the agreement reached. We are pleased that it delivers quickly, at least an increase of \$10.00 to the lowest paid

workers. Additionally, where agreement can be reached at the workplace level, then the full \$14.00 can be paid.

5 The agreement reached this time, that is, the splitting of the safety net adjustment must not be construed as setting a precedent or reflecting a position on the economy of Tasmania. It is simply an agreement which meets our present imperatives.

10 Both ourselves and the employers are clear that for the purposes of any future arbitrated safety net adjustment, the operative date would be 14 July. We think that the agreement reached is in fact consistent with section 36, that in fact it is in the public interest. We commend the agreement to the bench and again, I'd like to thank you for facilitating us - or facilitating the agreement that is reached between us. Thank you.

PRESIDENT: Yes. Thank you, Ms Fitzgerald. Mr Edwards?

15 MR EDWARDS: They appear to be slightly more recalcitrant than they were, jumping up this morning, to get in front of me, president.

PRESIDENT: Yes. Well, I think it probably indicates the degree of acceptance, that the arrangement that has been reached has with the union organisations.

20 MR EDWARDS: I think that's possibly true, president, and I join with the Labor Council to thank the bench for the assistance that they've provided to the parties in that regard. It provides an adequate opportunity to progress our discussions to the point where we can report to the commission that there is agreement on the claim that's before the bench and it is now properly reflected, I believe, by way of suggested revised wage fixing principles which are before you, sir, by way of exhibit 7.

25 There's a couple of issues I'd like to comment on in respect to exhibit 7, on the way through, and I think in doing it I'll just make a couple of other minor corrections to the typographical errors that I made in putting the document together.

30 If I could direct the bench's attention first to principle 2 - Structural Efficiency. At the very end of the first line of that principle, there is a square parenthesis there which obviously should not be and that needs to be deleted and as Ms Fitzgerald has already said to the commission, that we've taken the liberty of removing the previous T numbers because to include the fifteen from the last State Wage Case would have become quite onerous and cumbersome in our view and we could have ended up with a document that consisted almost entirely of T numbers. The rest of the principle has not altered.

40 The substantive change to the principles occurs at principles 7 and 8, which Ms Fitzgerald has taken you to in a fair amount of detail. There

is a minor change to principle 7.1. It is to refer to the previous \$8.00  
arbitrated safety net adjustments and just to modernise that principle  
we have made a few adaptive changes but it doesn't change the  
context of it at all and I don't take the bench any further in respect of  
5 7.2 and 7.3, except to say that we have differentiated between other  
increases which are available under various principles of the  
commission with MRAs and SEP increases being dealt with at 7.2,  
wherein the intention is that the parties to individual awards would  
confer with the view of reaching an agreement.

10 In the event that they are unable to do that, then the commission may  
be asked to exercise its arbitral role under the Act and it would, in so  
doing, determine the matter on its merits, I have no doubt.

At 7.3, we've dealt with outstanding safety net adjustments and we've  
set in place a period during which arbitrated safety net adjustments  
15 would not be sought to be incorporated into awards and that period is  
through to and including 1 September 1998. On or after that date, the  
parties to awards are free to make their applications again to vary the  
awards to incorporate past safety net adjustments.

If more than one of those adjustments is sought to be incorporated  
20 into an award and there are some awards, regrettably, that are in that  
condition then it is agreed that the parties to that award should confer  
with a view to reaching an agreement. If they are not able to do that,  
then again the bench would be asked to use its arbitral role in  
accordance with the normal requirements of the Act regarding equity,  
25 good conscience, substantial merits and the normal public interest  
tests.

I don't think much more needs to be said about those issues. I go to  
just a little bit of detail on that, simply because of some issues which  
have been before the commission since the last State Wage Case on  
30 those points where there was some confusion and I hope we've been  
able to eradicate that this time.

At principle 8 - Arbitrated Safety Net Adjustments, it's quite evident  
that the proposal before you in our agreement is substantially at odds  
with the decision of the Australian commission and it is a new  
35 approach in respect of State Wage Cases, as far as I am aware. I'm not  
personally aware of a decision of the Australian commission having  
been modified to this significant and extent in the past and in our  
view, notwithstanding the submissions of the Labor Council, we  
believe it is directly reflective of the condition of the Tasmanian  
40 economy, particularly as it compares to the national economy.

There can be no doubt for anyone that's read the federal commission's  
decision in Q1998, that they relied substantially on their assessment  
of the national economy and its robust nature to come to the  
conclusion they did as to the quantum and the timing of the increases  
45 that were awarded by that commission.

It was our assessment and that of other registered employer organisations in this tribunal area, that those increases could not be sustained at a local level and it was for that reason that we sought out negotiations with the Labor Council with a view to reaching some form of amelioration which would soften the impact while still allowing the low paid access to the same level of wage increase, albeit over a slightly longer period of time.

From that point of view, we are content with the outcome. We believe it is an adequate way of addressing the concerns that we had, albeit maybe not the same concerns that were being addressed by the Labor Council and its affiliates but we have been able to each accommodate the other's needs without perhaps necessarily agreeing on some of the fundamentals.

The principle itself indicates that the safety net adjustments would be available in two instalments, the first to be available from the beginning of the first pay period to commence on or after 14 July, the second some three months later, being the 14th October 1998.

We have used exactly the same plateau stops as those used by the Australian tribunal in their decision and the amount of the safety net in total is the same as the Australian commission decision but we've phased it in over that 3-month period. The table at page 5 of exhibit 7 clearly identifies the amount of increase to apply from each of those relevant dates.

PRESIDENT: Do you think we should incorporate into the document, the fact that this is per week and is from the first full pay period on or after those dates?

MR EDWARDS: The first pay period part is dealt with in the first paragraph following the table, president.

PRESIDENT: Yes, you're right.

MR EDWARDS: If the commission were minded to make it specific that they were weekly adjustments, I'd have no objection to that.

PRESIDENT: I don't know what else they could be but -

MR EDWARDS: Probably the easiest way to accommodate that, president, if I might suggest and I'm thinking on my feet, is that the second line of 8.1, between the wording, include and arbitrated, one could insert the word, weekly, to include weekly arbitrated safety net adjustments in accordance with the following schedule. I think that would, sir, accommodate the issue you raise.

PRESIDENT: Yes. I don't necessarily want to amend it on the run but - so, we might hear from the others subsequently.

MR EDWARDS: I take it on notice, president. I just also check, president, that in the copy you have before you, at the fourth line of principle 8.1, just immediately prior to the date 14 July 1998, there was a word, this, which is to be removed. It's superfluous and in fact  
5 doesn't really make any sense. There has been a minor adjustment at principle 8.3 as has been identified by Ms Fitzgerald. I don't intend to take it any further. The future of public sector awards is not one of the major issues that I have to contend with.

Principle 9.5 is a new principle which indicates that the intention is,  
10 both increases that are put forward by way of principle 8 are to be incorporated into the award by the same draft order but showing both of the increases separately.

At page 7 of exhibit 7, at principle 10.1.3, just for completeness sake, I'd indicate that the word, increase, at the beginning of the first line  
15 should have an 's' on the end of it and as Ms Fitzgerald has already taken the bench to there is a requirement to insert the words, from the beginning of the first full pay period to commence on or after the 14th July 1998.

The only other changes that have been made to the previous set of principles are at principle 16 and they are as outlined by Ms Fitzgerald. The first is the removal of the previously expressed T numbers, for the same reason I advanced earlier and secondly, the removal of the previous principle 16.2, with a consequential renumbering of the old 16.3 and 16.4, that is 16.2 and 16.3  
25 respectively. The removal of the old 16.2 has been agreed on the basis that the conference programme that was put in place by that principle has, we believe, now concluded and the parties are in the processes of implementing a new consistent award format which will be returned to the commission, hopefully in the not too distant future, along with the  
30 results of their consideration of the other issues arising out of principle 16.

I believe, president, that the process that was put in place by way of that principle last time, notwithstanding it was somewhat contentious at the time, has been a valuable experience. Certainly, from the point  
35 of view of our organisation, we've been heartened by the level of consent that there's been in that process and we thank the commission for the role they played and particularly yourself, sir, in convening and chairing the conferences of the parties on what was a rather tiresome and laborious process at times but it has worked well  
40 and I think it will be to the betterment of all participants in the system ultimately.

In respect to the agreement itself, we would share the view that the TTLIC have put, that it is consistent with the requirements of section  
45 36 of the *Industrial Relations Act*. We have said in the past and I repeat now, that we did give very serious consideration to opposing outright the flow-on of this increase for the reasons I mentioned before and it

was with some difficulty that we elected to take a different course. We are heartened by the fact that we have been able to reach an agreement, which softens the impact of the national increase and at the same time meets the aspirations that have been expressed by the Trades and Labor Council.

We therefore would indicate formally on the record that we do offer our consent to the agreement which is encompassed within exhibit 7. We will indicate formally that we have agreed with Ms Fitzgerald that the agreement reached does not create a precedent. It could be used in the future to beat the unions, or anyone else, around the head. That it is a decision that has been taken in light of the specific circumstances of this application and this application alone and from my organisation's point of view we have no intentions of using it as a precedent in the future. It's not to say we may not try to seek a similar outcome but we wouldn't use this as a precedent upon which we would hinge our argument.

Having said all of that, sir, we would rest with those submissions and commend the agreement to you. We would ask that the commission give serious consideration to issuing a decision on this matter at the earliest available opportunity to enable us to get the necessary information out into the field so that people can commence making preparations for the increase. We do have a nice little comfort zone there between now and the 14th July and I'd very much like to take the benefit of that period to get the information out into the world and to make sure that the agreement is paid as close as possible to that date. So we would ask the commission if they could give consideration to that request. If it please the commission.

PRESIDENT: Yes. Thanks, Mr Edwards. Mr Willingham?

MR WILLINGHAM: Mr President and members of the bench, I think it would be appropriate if, on behalf of the Minister for Industrial Relations, I indicated to the full bench that the agreement reached between the Trades and Labor Council and the Chamber of Commerce and Industry is endorsed by the minister on behalf of the Tasmanian government and accordingly, we commend to the commission that agreement and urge its approval upon the commission.

In the context of the provisions of the Act, going to section 36, we believe that those provisions are not offended by the arrangements that are presented to the commission. We do believe that the level of the increase which has been awarded by the national bench is at the very upper limits of what is sustainable within the Tasmanian economy and like everyone else in this room, a great deal of thought was given by the Tasmanian government to the approach that it should adopt in this case.

But after weighing up a number of factors, external to the considerations of this commission as well as those which we're

enjoined to do by section 36 and particularly in view of the cooperation and eventually the agreement reached between the two major parties, the Tasmanian government is persuaded to add its endorsement to the proposal and further than that, Mr President and members of the bench, I think I need not add.

PRESIDENT: Yes. Thank you very much. Ms Fitzgerald?

MS FITZGERALD: Thank you. I'd like the opportunity to make some comment. I think it would be very remiss of me to not bring to the bench's attention the fact that the AIRC did in fact consider sectoral effects and the differences between not only sectors but within industries and they were presented with much material, particularly from employer associations and the joint governments to emphasise the need to take account of sectoral considerations and sectoral differences.

So, for Mr Edwards, to suggest that this increase is based solely on the performance of the Australian economy is in fact not correct. The full bench of the AIRC said:

*In determining such a claim as that before us now, the Commission must balance a range of considerations. The differential impact across sectors and firms is one consideration. The level of a safety net increase however should not be determined by reference only to effect on employers.*

Further, they considered:

*That the safety net adjustment of \$10.00 awarded in April 1997 whilst providing a benefit to those relying upon award rates of pay has not had any adverse affects on the level of inflation and unemployment.*

Whilst they noted that the ACCI and others had submitted that safety net adjustments have a different economic effect as between industries and within industries and between sectors, that the cost impact will be greatest where the over-award payments are lowest. They acknowledged that.

The joint governments, as I've said, their submission indicated that there were differences within sectors - between sectors that should be taken account of. The AIRC said, on the material before them they were satisfied that a safety net adjustment could be made with limited effect on aggregate wage costs and on the economy generally. As stated, their conclusion was supported by the evidence concerning the effect, as I've said, of the April 1997 safety net increase and notwithstanding that increase, inflation has continued to abate and employment, even in the Tasmanian economy, has grown, albeit, at a rate that is much too slow.

5 So, I wanted the opportunity to point out to this bench that the AIRC had in fact considered the Tasmanian economy, as it has considered the economy of other regional areas and perhaps that was one of the reasons why the ACTU's claim of \$20.60 was not awarded and we in fact have a rate of \$14.00. Thank you.

PRESIDENT: Yes. All right. Thanks, Ms Fitzgerald.

MR EDWARDS: I just wondered, president - there was one minor outstanding matter that we were going to seek some further advice on.

PRESIDENT: Yes, Mr Edwards.

10 MR EDWARDS: That was the inclusion of the word, weekly, on the second line of 8.1.

PRESIDENT: Oh, yes. I meant to raise that. I'm sorry.

Ms Fitzgerald, do you have a view about whether or not the rates should be identified as, per week, somehow or other?

15 MS FITZGERALD: Yes, I think it would be useful.

PRESIDENT: And do you agree with Mr Edwards' suggestion that it ought to appear in the second line of 8.1 after, include?

MR WILLINGHAM: Excuse me, president, where's does, weekly, go again?

20 MS FITZGERALD: Weekly, prior to, arbitrated.

PRESIDENT: Prior to arbitrated. I think that was what you said, Mr Edwards?

MR EDWARDS: It was, president.

MR WILLINGHAM: That's not great ground, is it, president.

25 PRESIDENT: That's why I was seeking your endorsement. We'll go off the record for a moment.

**OFF RECORD 4.05pm**

**ON RECORD 4.06pm**

30 PRESIDENT: Yes. Thanks, for that discussion. The figures of the adjustment will have the initials P.W. after them in each case.

Very good. Well, thank you very much for your efforts today to bring this application to a fairly speedy and, I believe, worthwhile conclusion. It's the unanimous view of my colleagues and myself that

the proposed agreement should be accepted. A decision to that effect will be reduced to writing in due course.

The matter is concluded.

**HEARING CONCLUDED 4.10pm**