

COMMISSIONER WATLING: I'll take appearances please.

MS THOMAS: JENNY THOMAS. Are these matters being called on together, Mr Commissioner, or will we deal with them separately?

5 COMMISSIONER WATLING: Oh, we can call them - we can deal with together then if you like. It might make it easier - we'll just run straight on.

COMMISSIONER WATLING: Right, I'll take appearances in both matters please.

10 **MS J. THOMAS:** Yes, JENNY THOMAS of the Tasmanian Chamber of Commerce and Industry appearing on behalf of James Hardie Plumbing and Pipelines Pty Limited trading as James Hardie Pipelines and Kings Group Pty Limited. If it pleases.

COMMISSIONER WATLING: Good, thank you. Let the record show there's no other appearances. Ms Thomas, you've got the floor.

15 MS THOMAS: Yes, thank you. These are applications to vary section 36 - or clause 36(e) of the Retail Trades Award to insert therein two additional employers who wish to contribute into approved occupational superannuation funds other than those specified in subclause (d), those being the Retail Employees Superannuation Trust and Tasplan.

20 Now in relation to these matters, the commission has to be satisfied that according to section 32(1)(b) of the act that the proposed superannuation fund is a complying superannuation fund and is one which the commission is satisfied meets the wishes of the employees.

Now at this stage of my submission I might just deal with each application separately so that the paper work doesn't become confused because I have become confused this morning myself.

25 COMMISSIONER WATLING: All right.

MS THOMAS: I shall first deal with the matter of James Hardie -

COMMISSIONER WATLING: Well maybe I can ask on both matters, have you had discussions with the relevant parties to the award?

30 MS THOMAS: Yes, I certainly wrote to all union parties to the award prior to lodging the applications. I have had some correspondence from at least three of the unions in total and that was done prior to the application being lodged.

COMMISSIONER WATLING: Right.

35 MS THOMAS: And those unions that did contact me have indicated that they are - have no concerns with the applications and I have a copy of some of the letters that I have received -

COMMISSIONER WATLING: And those unions that are saying that are who?

MS THOMAS: We have correspondence from the ASU - or AMACSU as we know them in the state jurisdiction.

COMMISSIONER WATLING: Yes.

MS THOMAS: From the Shop Distributive and Allied Employees Association and I have a note of a phone conversation I had with Ms Shelley from the Miscellaneous Workers Union to say that she didn't object to one application.

5 COMMISSIONER WATLING: And the other ones - AMACSU and the SDA - what's the summary of their view?

MS THOMAS: I might give you the correspondence that I have received from AMACSU and the SDA.

COMMISSIONER WATLING: I note they're not here today but it's just interesting to see whether other parties to the award have been part of the consultative process.

10 MS THOMAS: Yes. Now you'll notice that the AMACSU letter is similar with respect to both applications; that Mr Ian Paterson indicates on behalf of the union that the union consents to the award variation sought in both T numbers on the understanding that virtually those three points there mirror the requirements that you need to be satisfied on, Mr Commissioner. So I think Mr Paterson made it clear.
15 Provided that you're satisfied then he would be satisfied.

COMMISSIONER WATLING: Right. Good.

MS THOMAS: And the SDA in their letter wrote to me requesting evidence that the employees concerned are joining the new fund of their own volition and at that stage I faxed to Mr Griffin on the same day a copy of the employee acceptance form.

20 COMMISSIONER WATLING: Right.

MS THOMAS: And I haven't heard back from Mr Griffin as yet, sir.

COMMISSIONER WATLING: Good, thank you. Now you are taking me to?

MS THOMAS: To James Hardie -

COMMISSIONER WATLING: James Hardie.

25 MS THOMAS: - Plumbing and Pipelines. If I could table some further documents for you in relation to this particular matter.

COMMISSIONER WATLING: Good. We'll mark this exhibit T.1.

MS THOMAS: As I have learnt with these matters, Mr Commissioner, there is rarely one that proceeds as I would prefer. You will note with the documentation
30 that you have there that you don't have a statutory declaration which we would normally present which declares the employees employed under the Retail Trades Award. We did have an earlier statutory declaration prepared by James Hardie but that was done back in May, and since then there has been a change in employees, so I'd ask that perhaps if you approved the matter in principle today, I have been in
35 touch with James Hardie - they are arranging a new statutory declaration that will declare that the employees indicated on the employee acceptance fund are still those employed under the Retail Trades Award.

COMMISSIONER WATLING: Right.

MS THOMAS: Now the first - this is a standard form that - that we have employers
40 complete and ask employees to sign. You will note that the three employees of James Hardie Plumbing and Pipelines have dated and initialled beside their names under the proposed fund James Hardie Securiplan. In fact I would probably prefer -

I don't know what you think about that approach, Mr Commissioner, but I think having the employees names typed in each section and then giving the chance to sign in one is a preferable way of dealing with these forms I think.

5 COMMISSIONER WATLING: We normally used to have a little lead in there didn't we that used to state that they did it having full knowledge of both schemes and they've made a recent choice and they've done it without duress.

MS THOMAS: Yes, that appears - or appears to on the first page, halfway down - the signature on this document by an employee of James Hardie Pipelines is evidence that the decision has been made without duress and based on consent.
10 The documents attached as Appendix A detailing relevant information on each superannuation fund applicable have been presented to each relevant employee.

COMMISSIONER WATLING: But are the employees signing that? The employees are only signing the bit that says 'employees who wish to contribute to the fund'.

MS THOMAS: Yes, perhaps they should have the proposed fund on the first page.

15 COMMISSIONER WATLING: So the employees aren't signing that they've examined both the schemes, are they? This is a slight change from your previous proposals isn't it?

MS THOMAS: Yes. They've - one of these situations where we haven't prepared the documentation and - it's almost good though that the employees have had to go to the bother of going to the end of the document to indicate their choice. It perhaps
20 does indicate that they have been given at least two pages. Well arguably, if it was the other way around it could be argued that they were only given one too, but yes, it's perhaps -

COMMISSIONER WATLING: How do we know what they've signed?

25 MS THOMAS: Mm. Look, I'm quite happy to send it all back and they can sign that front page or initial it.

COMMISSIONER WATLING: I think it's a simple process at the end of the day. We just want to know - or I certainly just want to know that they've examined the benefits of both funds and they've made the informed choice and they've done this
30 without duress, and they want to get out of one and get into this one.

MS THOMAS: Mm.

COMMISSIONER WATLING: And -

MS THOMAS: It might be that - or you might recommendations to everyone in the future that they have their employees initial everything to say that they have seen
35 the fund information, they have seen both pages of this.

COMMISSIONER WATLING: Yes.

MS THOMAS: And I can send it all back and have that done.

COMMISSIONER WATLING: Can you see what I'm getting at?

MS THOMAS: Oh yes.

40 COMMISSIONER WATLING: We've only - they could have got that in isolation.

MS THOMAS: Yes -

COMMISSIONER WATLING: We -

MS THOMAS: - they could have.

5 COMMISSIONER WATLING: I'm not to know - I've only got to be satisfied that that's what they want so how am I satisfied without calling them in? We're trying to do it the easy way here, aren't we?

MS THOMAS: Certainly.

10 COMMISSIONER WATLING: And I don't mind sort of cooperating but I want to, at the end of the day, be satisfied that they have weighed up the benefits and they've been able to see what each fund will give and then they've made a reasoned decision and that they clearly indicate which way they want to go in respect of which fund they want to put their money in.

MS THOMAS: Yes.

15 COMMISSIONER WATLING: But we've got nothing from them only three signatures and I've got to take it that all this is kosher.

MS THOMAS: I'm quite happy to forward everything back to them to have the employees initial each document - each page - the whole lot.

COMMISSIONER WATLING: Yes, right.

MS THOMAS: And then I think if that's done

20 COMMISSIONER WATLING: Yes. At least I know that I can take that as a -

MS THOMAS: And that might be the approach, and certainly I'll be recommending that to some people we deal with.

COMMISSIONER WATLING: At least they've seen every - they've - we know then that they've seen every page and this is what they want.

25 MS THOMAS: Yes.

COMMISSIONER WATLING: The alternative is to call them in and ask them.

MS THOMAS: Yes, well that's - that's true. If you want to make the trip up to Launceston I'm sure they'd probably welcome you on site.

COMMISSIONER WATLING: I won't be making the trip to Launceston.

30 MS THOMAS: No trips to Launceston?

COMMISSIONER WATLING: If I do it, they might be coming here.

MS THOMAS: Oh, right. I thought you might be able to coordinate it with another matter up there.

35 COMMISSIONER WATLING: No. No. Right, well you might just - with those comments in mind you might just want to continue and that it might be subject to doing this work.

MS THOMAS: Okay. Well I think the other matter -

COMMISSIONER WATLING: And - is this all you - that's all you want to say on this matter?

5 MS THOMAS: Well I think - yes, well we'll halt that one there and I'll get the pages signed and -

COMMISSIONER WATLING: Do you want to finish your submission in relation to this one and then it can be subject to this work being done?

10 MS THOMAS: Oh yes, I will do that then. Just moving on, I'd indicate that subject to the employees initialling all the documentation, the employees have been provided with the information relevant to the James Hardie Securiplan and the award funds Tasplan and REST. Now each fund has set out information relevant to charges, roll-overs, death and disability and investment returns or interest rates credited and so forth. So I'll have the employees initial those and that should, in my submission, satisfy the commission that they have been given all relevant information to make
15 an informed choice at least.

Oh, and the final document there -

COMMISSIONER WATLING: You'll notice that James Hardie doesn't describe any exit or entry fees? Seeing that they're the main charges, how would they make a reasoned choice on entry and exit fees? Just the Tasplan one?

20 MS THOMAS: No, well that - I don't know if that's -

COMMISSIONER WATLING: Tasplan talks about roll-overs, death. Does -

MS THOMAS: No REST doesn't either. That's something that is normally not contained on these documents.

25 COMMISSIONER WATLING: Yes. Certainly from own experience, one of the biggest problems associated with these funds is - would be entry and exit fees. In fact I have to tell you, I got out of one the other day and it was a 40 per cent charge to get out of.

30 MS THOMAS: I just noticed in the roll-over section in James Hardie Securiplan they do say in the middle there: that no fees, charges or commissions of any type apply to any part of the roll-over benefit, either on entry, whilst in the plan or on exit.

COMMISSIONER WATLING: But that's for roll-overs. Right.

MS THOMAS: I mean if that's -

35 COMMISSIONER WATLING: Yes, that's for - so if they roll into that they may - they may - they're not starting afresh are they?

MS THOMAS: No.

COMMISSIONER WATLING: They're going to - are they going to roll-over the Tasplan stuff?

MS THOMAS: I imagine they would have to.

COMMISSIONER WATLING: The question will be whether they're going to cease paying at Tasplan - are they in Tasplan now?

MS THOMAS: I couldn't advise you on that.

5 COMMISSIONER WATLING: Mm. Well on the form here, they're saying - oh, sorry - they're saying REST - the award fund is REST.

MS THOMAS: Where's that? On the -

COMMISSIONER WATLING: On the second page. The award fund REST. It doesn't say that they're a member. Employees who wish to contribute to this are, the award fund is that, so does that indicate that they're paying in - into the award fund?

10 MS THOMAS: No, if they haven't signed it. Is that what you're -

COMMISSIONER WATLING: So if they were comparing, they'd be comparing REST. Right. Oh well, I suppose it's the decision they've got to make. So we take it that they're in REST but we're not sure. Right. So they've seen these three documents?

15 MS THOMAS: Oh, I see, yes, I'll be - I'll be - that's my submission and I'll get the - I'll have the employer ask the employees to initial those documents to say that they have seen those prior to - prior to signing the employee acceptance fund form.

COMMISSIONER WATLING: Right, thank you.

20 MS THOMAS: The final documentation there is the - is an Insurance and Superannuation Commission letter for year of income 92/93 indicating that James Hardie Securiplan at that time was an approved fund for the purposes of the relevant federal legislation and that was dated 1st August, '94.

COMMISSIONER WATLING: Is it still relevant?

25 MS THOMAS: There's some - some question about that. When we were consulting with James Hardie about this matter they sent us some information to suggest that those letters of approval aren't issued as regularly as they were in the past with the change to the new legislation. I haven't been able to ascertain that. It may explain why we commission time after time with letters that only go up to '94/95.

30 COMMISSIONER WATLING: You'd really - you'd really think if they had to prove to the commission's satisfaction that it was going into approved fund -

MS THOMAS: Mm.

COMMISSIONER WATLING: - they'd be able to get it. I notice on this too, it's - 1993 has been crossed out and a four has been placed after it and it's for the income year of 1992/93.

35 MS THOMAS: Yes. Where is that cross-out?

COMMISSIONER WATLING: Right up the top in the circle at the top of the page - received.

MS THOMAS: Oh, I see. may not have received any correspondence in 1994 up until that date and hadn't changed the stamp. I can't explain that one.

40 COMMISSIONER WATLING: No.

MS THOMAS: And as I say, these things are a nightmare.

COMMISSIONER WATLING: Mm. Well we don't know whether it's an approved fund, do we? It was in 1992/93.

MS THOMAS: Yes.

5 COMMISSIONER WATLING: But we don't know.

MS THOMAS: It concerns me that we have a requirement in the legislation to prove to the commission that these funds are approved funds.

COMMISSIONER WATLING: Mm.

10 MS THOMAS: Now this comment that Mr Russell makes in his letter, if they're true, it presents some problems. It just says here -

COMMISSIONER WATLING: Who is Mr Russell?

MS THOMAS: He's their group employee relations manager, Sydney.

COMMISSIONER WATLING: Mm.

15 MS THOMAS: He just makes this comment but he also advises: Since the operation of the Superannuation Industry Supervision Act in July 1994, notices of complying the status have not been issued. Refer extract from CCH.

COMMISSIONER WATLING: Has he asked for it - for a case that's coming before the commission?

MS THOMAS: Well we asked for it.

20 COMMISSIONER WATLING: Yes.

MS THOMAS: And he came back. In fact they've only had that one issued and haven't had any issued since.

COMMISSIONER WATLING: Yes, but has he asked the company for it - Superannuation Commission for it?

25 MS THOMAS: I don't know if he's asked for it.

COMMISSIONER WATLING: See, there is a requirement on us to make sure they're a complying fund.

MS THOMAS: Yes. I mean I can make that - I'll send him his correspondence up - I'll just make that request.

30 COMMISSIONER WATLING: Well it certainly was a complying fund in the year 1992/93 income year.

35 MS THOMAS: But it could be that if they make the request for a notice then they won't be able to get a letter for some time because I understand with the issue of these things in the past there has been a significant delay. But I'll see if they can provide any other information that might indicate -

COMMISSIONER WATLING: So does that mean -

MS THOMAS: - it's a complying fund.

COMMISSIONER WATLING: - yes.

MS THOMAS: There might be something else.

COMMISSIONER WATLING: I'm not too sure that that's our worry is it?

5 MS THOMAS: No, I just wonder if there is another form of evidence that would satisfy the commission that it is a complying superannuation fund -

COMMISSIONER WATLING: A complying fund.

MS THOMAS: - other than the ISC letter. There may be something. I think that's about as far as I can take James Hardie.

10 COMMISSIONER WATLING: Right. Well let's precis what we've got to do in relation to this. We've got to get some declaration from the employer that these are the only employees covered by the Retail Trades Award.

The second is, that I want some indication that employees have seen the document - all the documentation and they've made a reasoned choice. Now I note that I've got
15 three signatures on one page - piece of paper - but there's a lot of other attachments.

And the third point is, that how do we establish that the exemption you are currently seeking is a complying fund - or the exemption you are currently seeking from, in this case REST, into the new one which is James Hardie Securiplan, is a
20 complying fund. I think they're the issues associated with that.

MS THOMAS: Right. I understand Mr Russell is on leave until 11th November so there will be some delay in attending to those matters, so -

COMMISSIONER WATLING: Well in the meantime they'll just have to pay into REST.

25 MS THOMAS: - in the meantime - yes. If perhaps - if I'm a bit a luckier with the documentation with Kingsgroup, that matter should proceed on its own if it - we're satisfied.

COMMISSIONER WATLING: Thank you.

MS THOMAS: Right. The other application relates to Kingsgroup Pty Ltd and for
30 the information of the commission - okay - I'll withdraw that - okay - I have a new set of documentation in relation to Kingsgroup Pty Ltd.

COMMISSIONER WATLING: Good. We'll mark this exhibit T.2.

MS THOMAS: The first page is a statutory declaration completed by Eric Roy Devine who is the Managing Director of Kingsgroup Pty Ltd. He has indicated in the
35 statement contained therein that there are seven employees employed by the company under the Retail Trades Award, being Luigi Spangard, Dean Berwick, Diane Hutton, Stuart Campbell, Charles Kahl, Judith Devine and Gunther Gastor.

And that declaration was completed in April of 1996 and needless to say that these matters do take some to process. I think explanation of part of the delay was
40 obtaining the summary information from REST which took some time.

Now on the employee acceptance form which is attached, fortunately in relation to this matter the proposed fund is on the first page and the employees have - seven employees have each indicated that they wish their contributions to be made into the Tasmanian Chamber of Commerce Industry Super Fund and the declaration or the statement above there indicates that the signature on this document by an employee of Kingsgroup Pty Ltd is evidence that the decision has been made without duress and based on consent. The documents attached as Appendix A detailing relevant information on each superannuation fund applicable has been presented to each relevant employee.

Now those seven employees who have signed the employee acceptance fund for those employees listed in the statutory declaration.

Now the employees have been provided with information relevant to the Tasmanian Chamber of Commerce Industry Super Fund, Tasplan and REST and once again those matters go to charges, rolling over, death and disability and return on investment information.

An in relation to correspondence received from the - we have received a letter from the ASU to say that they object to the application provided that I think the commission is satisfied that the - the employees have been provided with all relevant information, that the employees decision is free of duress or collusion and that the alternate fund complies with the requirements of the Superannuation Guarantee Act.

Now in relation to this particular matter, I do not have a letter from the ISC to indicate that the Tasmanian Chamber of Commerce and Industry Super Fund is a complying superannuation fund but I would say that that particular fund is a fund that is listed in other awards of this commission. In fact I processed a superannuation exemption matter quite recently where that fund was introduced to the award as an alternate fund and that was before the President, I think.

Now perhaps I may be able to get you the copy of the ISC letter from that matter.

COMMISSIONER WATLING: Did you present on that occasion a letter of compliance?

MS THOMAS: Yes, I think I did. So I might see if I can obtain that for you. But that would be one I think dated '94 - '94/95 - and I think they are the most recent letters received for any fund at present.

So subject to me providing you with that - that ISC compliance letter, I would submit that in relation to Kingsgroup Pty Ltd that the requirements of the act have been satisfied, that is, that the super or proposed superannuation fund is a complying superannuation fund and is one which you should be satisfied, Mr Commissioner, meets the wishes of employees and that the application is in accordance with - or there is no offence to the public interest requirements of section 36 of the act and that the award should be varied from the first full pay period to commence on or after today's date.

I had prepared a draft order but of course that incorporated both matters, so I think if the order were issued in the form indicated on my application -

COMMISSIONER WATLING: Right.

MS THOMAS: - then the commission could use that as a basis for an order.

COMMISSIONER WATLING: Good, thank you.

MS THOMAS: If it pleases the commission, that ends my submissions for today unless you have any questions.

5 COMMISSIONER WATLING: Right. Well in respect to this application, it will be approved subject to me being satisfied it's a complying fund and - and in respect of application T.6555 of 1996, the matter will be adjourned sine die until I get the paper work.

Good. That concludes these matters thank you.

HEARING ADJOURNED SINE DIE