

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 6556 of 1996

IN THE MATTER OF an application by the
Automotive, Food, Metals, Engineering,
Printing & Kindred Industries Union for an
interpretation of the Vegetable Preservers
Award

re clause 2 - Scope

PRESIDENT

DEVONPORT

~~HOBART~~, 8 May 1997
continued from 21/11/96

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Who is to lead off this morning? Mr Baker.

MR BAKER: Well there's a couple of - couple of little things. First of all, I'd just notify a change in appearances.

PRESIDENT: Yes.

5 MR BAKER: **MS McKEAN** is also appearing now with me today.

PRESIDENT: Very good.

MR BAKER: And secondly, I'd just like to thank the indulgence of the commission over the last six weeks for their understanding and it was much appreciated both by my organisation and myself personally.

10 PRESIDENT: Yes. Yes, I understand. Thanks, Mr Baker.

MR FITZGERALD: Could I just question - I didn't understand - I did understand that Mr Baker just wanted to raise that premium point - but I'm just not certain the capacity of a previous witness in appearing with Mr Baker - I just wanted to clarify that aspect. It seems somewhat strange. I've got no objection to the previous witness
15 being here but appearing along with Mr Baker in this matter in this matter seems somewhat strange. I just want to clarify that aspect if I could.

PRESIDENT: Mr Baker.

MR BAKER: Well, I simply wanted Ms McKean with me this morning. Now whether she's shown to be officially with us this morning or whether I simply have her with
20 the bar table is neither here nor there.

PRESIDENT: Yes, I don't - I think you're probably right. I don't think I can prevent-

MR FITZGERALD: No, it just - it seems strange -

PRESIDENT: - that occurring, Mr Fitzgerald.

25 MR FITZGERALD: - that appearing as a - a witness appearing along with Mr Baker. I mean -

PRESIDENT: And then later appearing as -

MR FITZGERALD: - what I would - what I wanted to make certain about is that by
30 allowing that to occur that then the witness is involved in either further evidence or indeed submissions which could possibly happen given that she's now appearing with Mr Baker, and that, I would think, the commission would disallow and I'd certainly be objecting to it if that did occur. But that certainly - that - by allowing entree to Ms McKean into this commission as appearing along with Mr Baker then that allows Ms McKean to make further submissions and I would be suggesting that
35 not be permissible given that she has already given evidence to the commission.

PRESIDENT: Of course the submissions would be given the weight that submissions are compared with evidence.

MR FITZGERALD: Yes, but it would be somewhat unusual, indeed improper, in
40 my submission, for a witness to in fact give - make submissions after giving evidence.

PRESIDENT: It's happened before.

MR FITZGERALD: Well, it may do but I'd submit that it's not the proper course. I think we need to clarify this from Mr Baker whether that's intended or whether Ms McKean is simply here for reference. I mean that - I've -

5 PRESIDENT: Yes.

MR FITZGERALD: - - got no objection to that.

PRESIDENT: Yes.

MR FITZGERALD: And that, while it's probably not necessary for Ms McKean to even appear if that's the course.

10 PRESIDENT: All right. Mr Baker, can you be more clear on that?

MR BAKER: Well, sir, it's certainly not my intention to recall Ms McKean either to the stand or indeed to present further evidence today.

PRESIDENT: Or to make submissions.

MR BAKER: Or to make some - or to make submissions.

15 MR FITZGERALD: That clarifies it.

PRESIDENT: You simply feel more comfortable with Ms McKean alongside you who you may refer to for clarification on issues.

MR BAKER: That's quite correct, sir.

PRESIDENT: To help you in your submissions.

20 MR BAKER: Yes.

MR FITZGERALD: Well, if that's what it's confined to, I have no problem with that, Mr President.

25 Just a couple of other preliminary matters I did raise with Mr Baker and I understand there's no problems, and also with your associate, with this matter set down for two days - and I understand there's another matter which I'm involved with tomorrow morning at 9:30, it's my prediction that we would finish, depending on the extent of cross-examination that my evidence this morning won't be extensive, that we'd be finished by lunch time today, but I just wonder whether I could seek the commission's indulgence if we are close to finishing if we could possibly extend the sitting time to, say, 1:30 and just depending where we are with it, but I'm of the view
30 the submissions which we have to make and the evidence which we had to put to the commission this morning is not going to take a lot of time and it will depend -

PRESIDENT: All right.

MR FITZGERALD: So if I could seek the commission's indulgence in that regard.

35 PRESIDENT: Yes, well we'll see how the time is going -

MR FITZGERALD: Certainly.

PRESIDENT: - when we get near that point.

MR FITZGERALD: Thank you.

PRESIDENT: I'm quite keen on the idea of concluding this matter as quickly as I possibly can.

MR FITZGERALD: Thank you. Yes, well it has been about for some time to say the least and those circumstances adjournment, I suppose, has been unavoidable. I find myself in those situations regularly myself.

But if I can just report, Mr President, that we have had some informal discussion relating to this matter and there are some other issues which we'd be raising - which we have already raised with the union and that relates not only to the words used and the interpretation of the words which - which is sought by Mr Baker's application, but in respect to how this matter can in fact proceed. In any event when effectively what we have for an award to apply, in my submission, is not only does the scope have to embrace the activity which is sought to be included but also there has to be an appropriate classification and wage rates and as the commission would be well aware, this is one of these archaic awards - very few of them left, I think - but where it just simply refers to the Food Preservers Award and - of the Australian Commission, and given that situation we would be also submitting - and I think Mr Baker's on notice of this - that the commission - that's not a valid award-making exercise. And it's - even though this has happened historically it hasn't been tested in my view and it would be our wish that it be tested here today. So if in fact the commission found in favour of the union's application which we believe that's - that chance of that is very remote but I can see - in any event the declaration would be a nonsense in view of the submission I've just made in respect to the application of the award against - by reference to the Food Preservers Award. So what it would mean is that we - we have been through a -

PRESIDENT: Would you be tendering the federal award to clarify that issue?

MR FITZGERALD: I wasn't going to tender the federal award - I don't think that's necessary - but I was going to refer to particular sections of the act which is involved in the commission's award making powers. And quite clearly what's involved here is not this commission making an award but the federal commission making the award, and in my submission in terms of the act that's not a valid award-making power or exercise. And so what I'm saying - and I'm just foreshadowing this and I have had discussion about this matter with Mr Baker - is that it really is an exercise in futility in my submission for us to proceed further. We are happy to proceed further. We did attempt to point this out to Mr Baker but his view was that he should proceed and we're of course - given that he's the applicant - we have to respond to that - have to respond to that approach. But we see that it really is an exercise in futility and there's also the relationship of other awards particularly the Farming and Fruit Growing Award and the Produce Award which I understand both the Australian Workers' Union and the National Union of Workers have interest in and have coverage in certain enterprises and in respect to the National Union of Workers they have coverage in Clements and Marshall by an industrial agreement in respect to the AWU they have coverage at both this company and formerly Vecon - now Webster Horticulture - so it has not only - what I'm saying, and I'll be saying this in more detail, Mr President, is that this matter can't be considered in isolation. From a practical viewpoint it must be considered in terms of not only the award as it stands and whether that's a valid award - exercise in award making and also its inter-relationships with other awards of the commission. So any declaration the commission may make in favour of the union's application in my submission will have an impact on both the produce and the Farming and Fruit Growing Award.

But I think they're just preliminary matters and it's regretted that we weren't able to be more persuasive with the union but -

PRESIDENT: Which ones - which one are you going to address first of the two issues?

MR FITZGERALD: Well I'm not sure. I raised them in a preliminary way now. Whether we in fact pursue them at this point or whether we pursue them in the
5 conclusion of our submissions, we are ready to proceed with evidence and I'm happy to present that evidence now. But if it does shorten proceedings in any way and if that's the commission's wish to hear -

PRESIDENT: Well I'd like to hear you on the issue of whether or not the Vegetable Preservers Award in its current form is, I think in your words, validly made.

10 MR FITZGERALD: Yes, well -

PRESIDENT: Am I'm particularly interested in that because I thought it was the case that some years ago the Supreme Court found that it was permissible for an award to - a state award to refer to a federal award for the purposes -

MR FITZGERALD: I'm not aware of that.

15 PRESIDENT: - of the body of the award and I'm particularly drawn to a matter that involved the former Chairman of the Wages Boards and one union official, John Grubb - I think it was in the Carriers -

MR FITZGERALD: Yes, yes, I recall that.

PRESIDENT: - Carriers Award.

20 MR FITZGERALD: I understand that. I have some knowledge of that decision - and I think it was the Carriers Award - but I make particular reference, sir, that that was obviously in respect to prevailing legislation at that time. We now have - we have had for some - since 1985 a new act and any - any ruling on that matter would have been in the context of that earlier legislation.

25 PRESIDENT: I'm not certain the powers of making the award are any different.

MR FITZGERALD: Well, I'm not certain whether that's the case or not; I'd have to obviously make a comparison with the former act but certainly there have been quite an expansion of powers and specific reference to powers of the commission, particularly this power, for instance section 43 for the purpose of making a
30 declaration wasn't previously contained within legislation of course.

PRESIDENT: No.

MR FITZGERALD: In terms of the award-making power, the commission's powers are specifically spelled out within this jurisdiction under section 19. The commission has in its - as one of its overriding protections, the requirement to pursue it to
35 section 20(1)(a) to act according to equity, good conscience and the merits of the case without regard to technicalities or legal forms and in terms of acting in the public interest and subclause (d), in that regard the natural justice requirements which the commission must exercise in any - in fact not only this commission but any arbitral body - must have regards to natural justice considerations. And if I
40 simply say that an award made by another body with the only opportunity for input being from those registered unions party to that particular award, that being the - as it was then, the Food Preservers Award but now amalgamated under the under the union which Mr Baker represents - I'm not sure what it's name is this week but I think it was the same as last week - and those other parties who are respondent to
45 the award - the employer parties - in fact named employer parties or as I believe

there could be parties through membership of registered organisations - but in my - my knowledge of the Food Preservers Award is that it refers specifically to named respondents.

5 So that - what that means, Mr President, is that those organisations which aren't party to that award have no right or entree into the federal commission to make any submissions. And clearly the commission wouldn't entertain non parties the right to put submissions to the commission. So what we have is an award in another jurisdiction with particular parties respondent to it and who can in fact make submissions to vary that award - either union or employer parties - and we have by reference a purported binding of those parties by this reference in the state award being clause 8 where it refers to the wages of the - known as the Food Preservers Award - without any opportunity whatsoever to the parties to make any submissions.

15 Now in terms of the natural justice requirements and the requirements of the commission to act in - according to equity and good conscience, that clearly is in contradiction of that. So that would be the basis of our submission in that regard. The commission's jurisdiction is outlined in section 19(2)(a) and the commission of course may make an award or order, and in this respect the commission hasn't made that award or order - it's in fact another body. The commission hasn't in any way -

20 PRESIDENT: Well that's the debate of course, isn't it, as to whether or not the commission has made it?

MR FITZGERALD: Well that's - it's our submission that the commission hasn't made it. Now the only way the commission can make an award, in our submission, 25 in terms of hearings, pursuant to this - to our legislation, is for the commission to hear the parties. Now in this instance, the commission in respect to this purported application of the award by reference, the commission hasn't had any involvement in any proceedings in respect to wage rates and indeed conditions because it does also refer also to conditions in any way. It hasn't acted in any way in joint proceedings with the federal body which is of course potentially impossible to happen. It's simply left it to - or what's simply occurred is, another body has heard submissions relating to those organisations which are respondent to the award and the needs of those organisations.

35 Now what we have is in the case of this instant case, an organisation - that being Perfector - and that's where the matter has been raised - in - and of course that, in terms of its legal obligations - that company has a continuing obligation pursuant to the industrial instrument which regulates it - and that is in fact the AWU section 55 agreement - if the union's argument holds true, then what it has in terms of Perfecta is a dual obligation to observe an agreement which was properly made with the AWU as well as conceivably - although in my submission quite absurdly - an obligation to observe another award of another commission of which it had no part involved - or had no opportunity to in fact make or change that award.

45 So the basis of our submission in that regard, Mr President, is quite clearly the commission has an award-making power. The award-making power can only be exercised by the hearing of the various parties - and they be the registered parties, being our own organisation or any other extra - employer organisation - and the union parties to the award, to put submissions in respect to wage rates and indeed conditions, and then to make an award based on the natural justice requirements which this commission is required to exercise and determine it by the handing down of an order in the form - or the handing down of an award in the form of an order.

Now that - the commission in terms of - historically has not done that and it simply has - has referred it to both wage rates and conditions to the Food Preservers Award. Now I understand that this in fact - and I could be wrong here - the last award of this type. I believe that the Transport Awards which previously used to refer that way and the ruling which you referred to referred to Transport Awards - or the Carriers Award - have in fact made - been made in the total comprehensive format.

Now for the commission to exercise a valid award-making power in this instance, what it would have to do, in my submission, is hear the parties in respect to a complete document including wage rates and conditions, which I understand it's Mr Baker's intention to do so, but that intention, in my submission, doesn't in any way correct any retrospective anomaly or deficiency as a result of that. What - what the commission would have to do in my submission is to - for Mr Baker or indeed an employer organisation to put a complete and comprehensive award document to the commission. It would have to then, in terms of natural justice, allow the parties to put any matter which is in fact a consent matter, and if there are any matters which are not agreed to, it would then again, consistent with the commission's natural justice requirements, it would have to then allow the parties to put submissions in respect to those disputed matters and then hand down the decision in the form of an order which would then be incorporated as part of a comprehensive award.

PRESIDENT: Yes, but are you saying that the award - or what is in the award - and leaving aside the references to the federal award - are you saying the remainder of the award is invalidly made?

MR FITZGERALD: The remainder of the award in fact, in my submission, only relates to those classifications which it purports to cover -

PRESIDENT: Yes - quite so.

MR FITZGERALD: - and that's - the Boiler Attendants, I think, is the -

PRESIDENT: Yes.

MR FITZGERALD: - only one there and I -

PRESIDENT: That appears to be the case.

MR FITZGERALD: Yes.

PRESIDENT: But are you saying that the award in that respect is invalidly made?

MR FITZGERALD: No, I'm not saying that. I can't see any and I don't think it in any way prejudices the arguments I've just put.

PRESIDENT: No. So really the award as it currently sits could be varied in the manner that you've suggested by way of application to vary wage rates and conditions.

MR FITZGERALD: Yes. And then the commission would in its -

PRESIDENT: So what does that do to the general argument about the scope of the award?

MR FITZGERALD: Well, we of course say, and we'll be producing evidence to say, that the words used in the awards don't in any way contemplate the activities conducted by Perfecta, and specifically those onion storage -

PRESIDENT: Yes. Well, I mean that's part of the argument and it's -

MR FITZGERALD: Yes, but - but what -

PRESIDENT: - that's the basic argument - but in terms of the validity of the award and its scope, well how does - how does your -

5 MR FITZGERALD: Well - how are the two connected?

PRESIDENT: - argument really go to helping your particular submission -

MR FITZGERALD: Yes.

PRESIDENT: - that the scope doesn't cover this particular operation of Perfecta.

10 MR FITZGERALD: It may - I can see the question certainly, sir - I think it comes down to a question of practical application of the award and in terms of the public interest the commission of course at any time refrain from further hearing the matter in respect to provision - section 21 of the act. And what I'd be simply saying is that the connection quite clear - is quite clear, Mr President - is that what - even if the commission did find that we were wrong and that Mr Baker was right that the words used did in fact cover the scope of the work undertaken by Perfecta, what I'd be submitting is that you would then have to look at the next test - what does that mean in reality, and the reality is that it then refers it back to a federal award, both in terms of wage rates and conditions, as I understand. And the submissions which I've just put in respect to that that, in my view, is not a valid exercise in the award -
15 award-making power of the commission - that would mean then if my submission were accepted from a practical point of view, the interpretation has, as I indicated, been an exercise in futility and I would submit, Mr President, that we're quite happy and we have today expert evidence from an agronomist from the company and also Mr Broadby whose had a broad - I'm sorry about the pun - whose had broad
20 experience with the company and -
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PRESIDENT: I didn't really think it was a pun, Mr Fitzgerald.

MR FITZGERALD: - and we're quite happy to present that evidence. But whether it's in the public interest for these proceedings to continue, it would be our submission that they should not continue because of that submission.

30 PRESIDENT: But wouldn't - sorry to interrupt you - wouldn't that next step that you're talking about - determining whether or not the conditions of the federal award had application - be the next step?

MR FITZGERALD: It could be.

35 PRESIDENT: And that that would come at a time that there was a - I would have thought - a claim for breach.

MR FITZGERALD: It could be certainly, but if the commission accepts those submissions now, it has the power in terms of these proceedings to refrain from further hearing.

PRESIDENT: Yes.

40 MR FITZGERALD: Because what it would be doing is that -

PRESIDENT: But I really don't want to get into - I didn't really want to get into the argument of whether or not the award could be applied to Perfecta when all I'm being asked to do is to determine whether or not the scope -

MR FITZGERALD: Well, I understand that - I understand that, Mr President -

5 PRESIDENT: - could cover Perfecta -

MR FITZGERALD: - but the effect of - the effect of an interpretation of course is not just simply for the fun of it, with respect - the effect of the interpretation is sought with the intention that the award is to be applied to the company.

10 Now I put the argument last time that again that's practically - apart from this issue of the award applying - practically, we have still in existence - the AWU agreements.

PRESIDENT: Yes.

MR FITZGERALD: So if the commission -

PRESIDENT: The whole thing has been based on the premise that the company is covered by an agreement anyway.

15 MR FITZGERALD: Yes. Well -

PRESIDENT: And the - this award, even if it was found to have application, could not apply.

20 MR FITZGERALD: No, I understand that - yes - certainly - I understand that the argument was, I think, rejected on the last occasion by you, is that that agreement is not necessary there in perpetuity and could be retired from by either party, however the argument which I've just put in respect to the award - and by reference to the federal award - is a different argument to that. This award -

PRESIDENT: Yes, I understand that.

25 MR FITZGERALD: - is an ongoing award. It has ongoing life, if you like, until the parties may take action to rescind it.

PRESIDENT: But if I find that the scope - the words in the scope - apply or don't apply - then parties can take whatever action they need in relation to the award to rectify or -

MR FITZGERALD: They may.

30 PRESIDENT: - or ignore the situation.

35 MR FITZGERALD: They may but I think what - what needs to be recognised, Mr President, is that the public interest criteria in terms of these proceedings are paramount and it's my submission - the submission I've just made is in fact a correct position and what that means then is that the parties are incapable of in fact enforcing the award because we have - we then have a situation where you've made a ruling that the scope covers the activities of Perfecta but then to apply it there's just simply no way that can be applied.

40 PRESIDENT: Yes, well I think it would be wrong to say that the words in the scope didn't cover those operations simply on the basis of the fact that the parties had been negligent in the way in which they'd kept the conditions in the award up to date.

MR FITZGERALD: I'm not seeking to do that. Obviously the matter of the interpretation of the scope is something which stands alone but what the commission has - and it has specific powers in respect to these proceedings, if it sees that any finding it makes in respect to the scope will, given the submission I've
5 made in respect to the award and by reference to the federal award, be completely fruitless, in -

PRESIDENT: We don't know that at this point -

MR FITZGERALD: Well, it's our submission that in terms of that, the award cannot apply by reference. It's not a valid exercise-making -

10 PRESIDENT: Yes, well as I say, I really think that's an argument for another - for another time.

MR FITZGERALD: Well, I think - that's - that's your decision, commissioner, but - Mr President - but I believe it's indeed a compelling submission -

PRESIDENT: Yes. It may well be at a later time.

15 MR FITZGERALD: It may be but I think we shouldn't also ignore the scope of other awards which is again another practical element of this - of this case, and that's in respect to the Produce Award which refers to a number of different aspects including hop and/or fruit merchandising and/or cool store keeping and/or refrigeration store
20 - sorry - if I can mention that - the Produce Award is one which the NUW has - is party to and has - and has members involved in precisely the same activities undertaken by Perfecta engaged at Clements and Marshall subject to a section 55 agreement, but particularly the implication - and I simply say that if in fact the
25 commission - and again this is consistent with the practical submission - the practical effects of the submission which I just made a moment ago - the Farming and Fruit Growing Award includes, and I quote: the preparation, sowing, raising, packing and harvesting of crops including grains, vegetables, peat moss, fungi, hops, nuts or other specialised crops grown for the production of essential oils or
30 pharmaceuticals. Now clearly the activities which we've seen in evidence so far involves the harvesting and packing of those. Now what it would mean is if the commission did find in favour of the union's application we then have quite clearly set up a situation which is in contradiction in our submission to an award which already exists of the commission.

PRESIDENT: Yes.

35 MR FITZGERALD: Our submission is that - and in respect to Perfecta, and we'll be making more submissions in this regard later, that it is in fact an integrated operation. Perfecta have a number of different arms to their operation and Mr Broadby will tell us this and the - it is, if you like, an all-embracing farming activity so we have sowing, growing, harvesting, packing and distributing all as part of the
40 farming activity.

Now it's always been Perfecta's view, as it has been the alternative union's view - the AWU's view - that the appropriate award is in fact the Farming and Fruit Growing Award and they have observed - except to the extent that it's been varied by the section 55 agreement - this award. Now what it would mean then is if the
45 commission did find in favour of the union's application, is that we then we have an immediate conflict in respect to how that relates to clause 2(a) of the Farming and Fruit Growing Award, and that, I believe, in the public interest is not a desirable situation for it to occur because it's a rock and a hard place situation, I'd submit, Mr President. If you find in favour of that argument then we have that immediate

conflict and in my submission we have attempted by discussions off record with the unions which we didn't take part of - part in - but we encouraged the other unions to - to in fact initiate those discussions and I understand they did occur but weren't productive - it's my submission that the most practical way of resolving this matter is in fact by either resolution by agreement between the unions or indeed if that's not the case then the proper applications to vary awards to better clarify the scope and to what activities they apply.

So the three arguments I've put - not only in respect to the one which I put on the last occasion - the AWU agreement argument - the award argument which I clearly can see that that may be at another place in another jurisdiction but it still has in my submission a practical outcome here and also this - this other aspect about other awards of this commission - or the implications in respect to other awards of this commission - are all based on public interest criteria and it would be our submission that the commission should not hear the matter any further and direct the parties into discussions along the lines which I've suggested. If the commission was not inclined to that view at this point in time we're quite prepared to run our argument in respect to what the true meaning of 'preserve' in the context of Perfecta is, and not from the food technologist's point of view but from a practical point of view which it must be considered in terms of the interpretation of the commission. The evidence of the food technologist was interesting but with respect completely unhelpful to the matter at hand, and it's my submission that this interpretation has practical outcomes which are undesirable in the public interest given the possible conflicting scope by other awards of this commission.

PRESIDENT: Before you go on, what sort of discussions are you suggesting that might be necessary?

MR FITZGERALD: I think what would be necessary, Mr President, is for unions in the first instance, and in my submission -

PRESIDENT: But you say the unions have already met.

MR FITZGERALD: - well I understand -

PRESIDENT: And failed to reach agreement.

MR FITZGERALD: - I obviously wasn't - it was just the information which was passed back to me, but I understand that meeting was unsuccessful. But if the commission - given that those meetings were unsuccessful, then I think the most practicable outcome is for either the commission to adjourn this matter and convene a conference of the parties, who are respondent to other awards, and to try to sort it out by some form of conciliatory conference. And if not, it can be sorted out in that way, then I think it is then for the commission to direct the parties to make applications to either change or vary the scopes of the existing awards to clearly clarify it, because it would then - and I understand Mr Baker's intention is to in fact make an application to vary this award to make it comprehensive without reference to the Food Preservers Award; that's been indicated to me.

If that is the case, then that should happen, and the first part of that application would in fact be determination of the scope, and then the respective parties could put their arguments as to the scope and its possible effects on other awards of this commission. And the commission could hear all employer and union parties, and it's not only our own organisation, the TCCI, but also Tasmanian Farmers and Graziers Association which is respondent to or party to the Farmers and Fruit Growing Award. And I would submit, even though Mr Rice is aware of these proceedings, he's probably powerless to intervene in these proceedings.

But if it was directed the way in which I suggested, then clearly he would have a position to put in respect to his members, who do precisely the same activities which Perfecta does, and the commission can then make a decision based on the merits, rather than as we have seen here a very narrow interpretation of the words used which, in my view, clearly satisfies the natural justice requirements which the commission must recognise here.

PRESIDENT: Well, can I hear Mr Baker -

MR FITZGERALD: Certainly.

PRESIDENT: - on those preliminary points.

MR FITZGERALD: Certainly. If it please.

PRESIDENT: Good, thanks, Mr Fitzgerald. Yes, Mr Baker.

MR BAKER: Well, that was an interesting few minutes from Mr Fitzgerald. Yes, I think there are a few things which perhaps we should discuss. There has been some discussions between the AWU and ourselves, which arose as a consequence of correspondence received both from the AWU and also a letter which was sent to myself from Mr Fitzgerald concerning possible implications that this application had. I had those discussions with Mr Cooper of the AWU as late as Monday of this week. And to follow that up, there was a further letter which arrived at my office yesterday from the secretary of the AWU, and I'll just read that into transcript so that you are fully aware of what has transpired, and this is from the secretary of the AWU, Mr Don Hayes:

I understand the above-mentioned application -

that's today's application

- has been discussed with representatives of your organisation. I am advised that a recent meeting between Greg Cooper of the AWU and Phillip Baker of your organisation was unable to address the concerns of our respective unions. The AWU has concerns, but should the AMWU be successful in the interpretation of the Vegetable Preservers Award, then work performed by AWU members currently subject to the Farming and Fruit Growing Award would be subject to an award to which the AWU is not a respondent. I believe the best way of addressing the problem would be by agreement of the respective unions.

Given that I believe the AWU application has the potential for causing, in the future, problems for our respective organisations, I will take steps to ensure the president of the commission is advised of our concerns prior to the hearing, which is set down for Thursday the 8th May.

And it says 'your early response'. Well, unfortunately of course, given the time scale, I have been unable to respond to the correspondence.

So there have been discussions about the implications of the application which we lodged last year. And perhaps before addressing it, and the matters which Mr Fitzgerald has raised, we should perhaps go back to some of those issues, which were the basis of the applications, which were made last year. The applications arose, and as subsequently this application arose, because the TCCI took challenge with us over the application of our rules and the application of an appropriate award. Now, as was indicated last year, the AMWU has members in agreements operating covering people who work in - for the want of terminology - the packing,

preserving, sorting, distribution, et cetera of onions. And there was a challenge to our constitution, our ability to enrol those persons. As a consequence of that, my organisation believe that there was no alternative but to defend that position because it had implications for us in a number of locations elsewhere.

5 Those applications were proceeded with last year. The original application which we bought as a vehicle was the application for breach against the company known as Perfecta. That application was subsequently withdrawn, and it was suggested at the following discussions between ourselves, and also, I might add, Mr Fitzgerald, who in fact made the suggestion as well, that we should proceed with an application
10 under section 43 of the act. That was subsequently done and we set about demonstrating to the commission that the process - the process that's undertaken in the harvesting and the packing and the sorting and the grading and the packing of onions, within that there is a preservation function. And hence what flows from that is two things: one is that we have constitutional coverage on those people
15 involved in that preservation function, and also we brought to the attention of the commission that there is an award which covers those people. And that was the basis of the arguments which we put to you last year, and obviously remain at the forefront at the present time.

Insofar as Mr Fitzgerald's comments are concerned about public interest, I believe it
20 would not be in the public interest not to proceed with the hearing, because there are serious questions which have been raised about the application of various awards. And I believe just because some organisation or some individual raises a query that says, well if you do this something else might happen, therefore you shouldn't do the first thing. I don't think that's appropriate.

25 I believe the commission has an obligation, and in fact that obligation, as quite rightly pointed out by Mr Fitzgerald this morning, under section 20 of the act that it: shall do all things as appear to be right and proper for effecting conciliation between the parties, for preventing and settling industrial disputes and for settling claims by agreement between the parties.

30 And what Mr Fitzgerald is proposing to you, this morning, is one of two things. You either simply say, look it's all too hard, if we do this then we'll explode the Pandora's Box, and all hell will break loose. Or alternatively, in order to settle the dispute we widen the dispute, we bring in everybody that we can think of who may be affected and we have this huge conference and we'll somehow or other sort it all out.

35 Now whether that, at the end of the day, will resolve the dispute or simply exacerbate the problem, I don't know, and I am sure Mr Fitzgerald doesn't know either actually. But there have been decisions of the Federal Commission when issues like this have arisen about - sorry - claims about awards - the application of awards and people pay disputes and so on, and the Federal Commission has
40 basically taken a decision that if it has a dispute there which affects one or two parties then - which may in fact relate to other parties - then it has taken the view that: let's get this dispute sorted out and if there is another dispute that follows, well then, sobeit, but let's do it in a consequential manner without expanding the dispute and at which time, of course, resolution of the problem may in fact be
45 revoked altogether, removed altogether.

The comments relating to natural justice are interesting. As we are aware, as far as this commission is concerned, indeed as far as the Federal Commission is concerned, there have, and indeed in all statutory authorities - legal authorities throughout Australia - the principles or the basic principles of natural justice apply,
50 except of course under Division 3 Agreements, where I would argue that that is not the case at all, and people are denied representation -

PRESIDENT: Division 3?

MR BAKER: - Division 3, agreements of the State Commission.

PRESIDENT: Part IVA?

5 MR BAKER: Part IVA. I would argue that, and I think that's been demonstrated in proceedings in another area.

MR FITZGERALD: Sorry, sorry. Can you repeat that argument, I just missed it.

MR BAKER: Missed it?

MR FITZGERALD: Mm.

10 MR BAKER: I don't believe that natural justice applies to persons covered by Division IV Part A - sorry I'll rephrase that again - Division 3, Part IVA agreements of this commission.

PRESIDENT: Well that's been an argument a number of unions have put forward since 1992.

MR BAKER: That's correct sir.

15 PRESIDENT: Yes. Okay.

MR BAKER: Sir, I don't think - and certainly that is the case, but again as far as the issue of natural justice is concerned, it's really talking about people who are direct parties to this award. It is not a denial of natural justice to say that a party who may be affected or who has some indirect interest in the proceedings is denied natural justice simply because they are excluded from these proceedings, or indeed choose not to attend these proceedings. I mean I understand - or understood that 20 Mr Cooper from the AWU had intended to be here today.

25 PRESIDENT: Well look, I should put it on the record here that I had heard from Mr Cooper and I said to Mr Cooper, 'Don't bother seeking to intervene unless you're going to argue to me about what the words of the scope mean, nothing about what union ought to have coverage and who's covered by what agreement, simply what the words of the scope are.' And he said, 'Well if you're simply going to go to that aspect of the case, I'll leave it to the parties.'

30 MR BAKER: And I think - well I think that sort of reinforces what I said. I mean there is a matter here which we've asked you to determine, that a part of the process - the part of the process of the harvesting, of the packing, distributing and sorting, except for the onion, there is a preservation function.

PRESIDENT: Yes.

MR BAKER: And that's what we seek to -

35 PRESIDENT: Well look the reason I told you about my conversation with Mr Cooper was that I didn't want the comment that you made on the record to remain the only comment about the AWU's position.

MR BAKER: Yes.

40 PRESIDENT: I still think the AWU quite - has quite an interest in the issue, and I wouldn't want anybody to think they don't have an interest, but they are not here

today because they don't want to get involved in arguing the particular words of the scope.

MR BAKER: Yes. Well I think, sir, that the argument of their interest, they certainly have a consequential interest.

5 PRESIDENT: Yes. Yes. Yes, I wasn't meaning interest in the sense of the way the word interest is defined in the act.

MR BAKER: Insofar as the application of the award is concerned - and Mr Fitzgerald, as he rightly pointed out, has raised the issue of the impact of the Vegetable Preservers Award with me previously - and it's quite right that when he indicates to the commission that I have said to him, that it is the intention of the AMWU to fill the award out - to put it - to make it an award consistent with other awards of the commission so that it does have wage rates prescribed and a full set of conditions of employment and - but I don't believe that that - having said that - I don't believe that impacts on the operation of the award. It is an award of the commission which has been validly made; it stands not subject to any attacks as to its credibility; there is no application before this commission that the - or in fact before the Supreme Court of Tasmania - that the award is invalid or that it was invalidly made, and again, we are arguing the scope - the application of the scope provision of the award, not whether the wage rates are validly - are validly - are made or whether the - who it applies to - individuals within the award structure. So I think that argument doesn't bear weight. I mean that's - and I think as was discussed between yourself and Mr Fitzgerald - that is an argument for another time, and indeed most of the arguments which Mr Fitzgerald has put before you today are in that circumstance - that they are an argument for another time.

25 PRESIDENT: Yes. There's one - there's one that's not, and I am particularly interested in it, and I hope you will address it, and that's the intra - interrelationship between various awards of the commission which appear on the face of it to have the potential to cover the same work.

MR BAKER: Well, I'll address that now then.

30 Within the state jurisdiction, over the years, there have been a number of awards which have done two things. For certain employers, they have found themselves respondent to several awards of this commission, all operating at the same time with an equal force of law and over the years the trade unions together with the TCCI in many of those instances have reduced the application of those awards by either amalgamating them into one or seeking and changing the scope clauses of various awards so that the average employer in Tasmania was not subject to a multiplicity of awards, and that's been to the benefit of all the parties involved and there remains other awards of this commission which operate either singularly or with a dual application where there is more than one applies, and that happens now.

40 In some areas, and of course employers, and I suppose quite rightly, simply choose an award after discussion with either the relevant employer organisation or indeed after discussions with the Workplace Standards Authority as to which is the more appropriate of the two awards to apply.

45 In this situation, there are in fact already existing covering certain work, there is the Produce Award, as Mr Fitzgerald's pointed out, which covers cool stores and refrigeration of cool stores and so on. There is the Farming and Fruit Growing Award and we have suggested to the commission that in fact the Vegetable Preservers Award also applies in those areas.

So at the present time one could perhaps run an argument to suggest that a place like Perfecta may in fact be covered by already two award, Farming and Fruit Growing Award and when they bring the product in and put it into a cool store that they may well be covered by the Produce Award and you then have a third argument which may suggest that in fact if they are in fact preserving the fruit or the vegetable, that they are indeed covered by the Vegetable Preservers Award.

PRESIDENT: Yes. Go on.

MR BAKER: I'm glad I was so succinct about it.

Now, along with that, as I've indicated, it's probably been brought about by either historically what has applied or has been determined in discussions with people, or whatever it has been over the years.

What we have put to the commission is that as far as our areas are concerned - as far as our areas of coverage are concerned - our award coverages are concerned, we want that position reinforced and we are seeking to reinforce it and if that means, for example - and I suppose it comes back to my earlier comment about the Pandora's Box, is that there is the possibility that three awards may well apply.

What we are asking you here today to determine is that the Vegetable Preservers Award applies to people who are engaged in that occupation.

Mr Fitzgerald then says, well, that's fine, but that then makes Perfecta subject to two awards. They're subject to the Vegetable Preservers Award when the product leaves the field. When it's in the field, they're subject to the Farming and Fruit Growing Award and at the other end when the product is being despatched. And then you could then have an argument raised by the Workplace Standards Authority or some other individual of - some other competent person that we then have the other award applying as well, the third award.

They, I would suggest to the commission, those latter two are then consequential matters which need to be dealt with. The first issue that needs to be dealt with is the application of the Vegetable Preservers Award, whether it applies to the process or it doesn't apply and then we need to say, what is the extend of the application of the scope clause of the Farming and Fruit Growing Award and then what we do with the third award because I am sure - in fact I would be confident, that this is not the only situation that applies as far as the awards of the commission are concerned in their scope.

I mean - some awards, as you are aware, sir, have specific exclusion clauses written into the scope to ensure that they don't overlap with awards but in this instance, as I reiterate, I think as far as the current dispute before you today is concerned, the issue of the application of the Vegetable Preservers Award needs to be determined because it arose - the dispute arose as a direct result of the position adopted by the TCCI and that position needs to be sorted out.

Now, if Mr Fitzgerald, when he talks of a conference - I'm not too sure how many conferences he is proposing, but if he is proposing something that can sort the issue of our rules and the application of them thereof, then perhaps some solution to this issue can be resolved. If not, then I think that the commission has no other alternative but to determine whether or not the Vegetable Preservers Award applies and then having determined and should it determine that in fact that it does apply in the manner in which we are seeking it then may, as a consequence of that, oblige other organisations to lodge either amendments to the award - to other awards, or to seek other processes to deal with the resultant decision which you may or may not make in these proceedings.

PRESIDENT: Yes. All right. Thanks, Mr Baker. Mr Fitzgerald, do you want to say anything to that before I rule on it?

MR FITZGERALD: I think I should. We would still be wanting our submission in respect to this matter not proceeding any further at this time if we could request
5 that that be determined by the commission but I think, before I do - because there are a number of things which I do want to answer and it seems that with respect to Mr Baker, that he's somewhat paranoid about the position of the union rules.

You will probably recall that it was certainly a matter which was raised by us in earlier proceedings when we were attempting to have the section 55 agreement made
10 between Perfecta and the AWU approved by this commission and it was certainly raised but at that time not pursued.

Now, I can say categorically that the effect of this application, whether it be successful or otherwise, will have no impact whatsoever on the issue of whether Mr Baker's union's rules are comprehensive enough to embrace this activity or not. The
15 application of course is confined simply to the matter of the words of the scope clause. Now, we're not seeking in any way nor - and we can undertake here today that we are in any way seeking to challenge the union's rules in that regard. That matter was raised certainly in the earlier proceedings. It wasn't pursued formally.

As you probably recall, the union - Mr Baker's union did withdraw from those proceedings and allow for the AWU agreement to be registered. The matter of the
20 rules at that time wasn't pursued by us, nor will it be pursued at this point in time. It seems that that's the major cause of concern which Mr Baker has and if it is, I think what I just put to the commission should allay his fears in that regard.

The other point - and I think Mr Baker used the words, 'they remained at the forefront'. Well, from TCCI's point of view that's certainly not the case. It may be in
25 Mr Baker's eyes but given what I've just put to the commission in respect to that issue, I hope that they no longer remain at the forefront because they were certainly never at the forefront of these proceedings from our point of view.

In terms of this submission by Mr Baker that the commission can just determine this matter separately and have no regard - and that was the effect, I believe, for
30 what this decision would have in respect to any other award, in my submission, that clearly is not what the commission should be doing. The commission cannot, in my submission, disregard the effect of this decision or potential decision on any other award of its own and if it in fact does, in my submission, make a decision in favour
35 of Mr Baker's application, which then has an implication for other awards of this commission and create further conflict and difficulties in interpretation, then I would submit, Mr President, that the commission's then not acting in the public interest by allowing to proceed that way.

So, Mr Baker suggested that we should have this matter heard and determined and blow the effects on anything else - I'd submit quite clearly, that that's not the
40 commission's role nor should be the way the commission acts. Quite clearly, in that regard, the commission obviously is well aware and we've made the commission aware that in terms of the Vegetable Preservers Award and we'll make further submissions in respect to this later, there's three parts to that scope. The first being
45 fruit or vegetable preservers or (b) sauce, soup including soup concentrates or vinegar making or (c) producer of fruit juices or vegetable juices.

Now, quite clearly, all those are synonymous in terms of changing the nature of the product. Now, against that, what I would be submitting is that you can't just interpret the words 'vegetable preservers' in isolation. They must be interpreted in
50 terms of those other parts of the scope of the award.

Now if you compare that to the Farming and Fruit Growing Award, where it's clearly all in the one sentence in respect to farming activities, particularly crops and then there's animals in the latter parts of the scope, but it talks about:

The preparation, sowing, raising, packing and harvesting of crops including -

5 And it goes on to name those crops. Clearly, that contemplates a continuous integrated operation and there's no separate aspect which Mr Baker suggested that at some time - and I'm not sure at what point, there is a preserving function involved.

10 I think, with respect to Mr Baker's submission about which awards could apply to this organisation, all that does, in my submission, is confirm the early submission I made in terms of the pragmatic effects of any interpretation. At what point do you say that we move away from the farming activities and move into - as was suggested by Mr Baker, preserving activities. There are no employees, as we've seen, involved particularly in the preserving function. Those employees are involved in the dispatch
15 of the product from the farms into the situation where they are graded and sorted and are packed and the only suggestion, I think, of preserving activity, particularly from the witness was that where there is some use of fans - ventilating fans, that that is in fact preserving them.

20 Now, there is no one person or a number of people or a group of people engaged in that particular activity at Perfecta, as we saw. It's just part of that integrated operation. So, Mr Baker's submission which, with respect to him, he tripped up on badly in my view, quite clearly indicates the absurdity and the pragmatic effects of which award applies to this organisation and he says that there are a number of awards which apply to many different organisations. That can be so but in my
25 submission, that's where there are a number of activities carried on by the same organisation.

In this situation, there is one single activity, if you like, as part of that process. There are awards applying - there are a number of awards applying to various organisations where there are in fact occupational awards which cut across. Now,
30 this doesn't apply in this situation. So, quite clearly, the effects of Mr Baker's submissions indicating that three or four awards could apply does in fact reinforce my argument relating to the pragmatic effects if in fact you do choose to interpret the application in accordance with the application made by Mr Baker.

35 The other point - Mr Baker indicated that there's been no attacks on the credibility of the award as it stands in terms - by reference to the federal award. Well, in terms of this company - we can only speak in terms of this company because this application is made in respect of this company, Perfecta. There is no reason to attack that credibility up until now. The reason being is, that the company hasn't observed the award. It's observed up until the AWU agreement the appropriate
40 award which dealt with its activities and that's the Farming and Fruit Growing Award.

45 So, again, I don't see how that argument can enter into the scheme of things. So, it's my submission, Mr President, that in terms of the section 21(c)(ii) of the Industrial Relations Act, that the commission should not proceed any further in the public interest. Clearly, if there is an interpretation made, as you indicated, that will in fact create confusion in terms of how it relates to the Farming and Fruit Growing Award because clearly that award also contemplates the packing function, packing and dispatching function. In terms of the - the implication in terms of the Produce Award is again very real.

It seems that the implication of the application is that anything relating to some artificial process like providing ventilation or some mechanically induced process, if
I

can put it that way, then the implication is that cool stores - any cooling of cool stores - any farmer who has apples in cool stores as provided by the Produce Award, could also be encompassed by the Vegetable Preservers Award because according to the evidence of the food technologist, by putting them in a cool store that's again
5 preserving the life and again - in the same way as what's been said in evidence in respect of onions and that again can produce some conflict in terms of the Produce Award.

So, it has implications and I don't think they can be ignored.

PRESIDENT: All right. Well, thanks, Mr Fitzgerald.

10 For a number of the reasons you've just enunciated, I intend to proceed. I think it's in the public interest that we seek to clarify the situation, at least in respect to the Vegetable Preservers Award. If there is going to be a conflict because of a declaration - I'm not saying there will be but if there were to be a declaration to the effect that the Vegetable Preservers Award applied to Perfecta, then it will be up to the parties
15 to get together and negotiate a sensible outcome.

As it stands at the moment, there is confusion and sooner or later we are going to have to put in a circuit breaker and my declaration, whichever way it goes, will provide all the parties with the opportunity to pursue a more meaningful arrangement in the future. All right. But I take on board your submissions in
20 relation to the validity of the award. I take on board your submissions in relation to the relationship between awards. I'll have regard to those things when I come to my conclusions.

MR FITZGERALD: Well, if that's the case, Mr President, we would seek to just proceed with our evidence this morning and I'd like to call our first witness, Mr
25 Patrick Johnston.

PRESIDENT: Yes.

PATRICK JOHNSTON, sworn:

MR FITZGERALD: Mr Johnston, just for the purpose of the record, could you state your address please ?... 73 Eastland Drive, Port Sorell.

30 Thank you. Firstly, who are you employed by ?... Perfecta Produce.

And how long have you been employed by Perfecta Produce ?... Approximately seven years.

All right. What is your role in that employment with Perfecta ?... Well, my position is Agricultural Manager and I'm responsible for the contracted production that we
35 undertake on the north west coast and the north coast of all our vegetable produce.

Right. So, just for the purpose of the record, what types of produce are encompassed under your control ?... Onions, carrots, swedes, Japanese squash and from time to time some other small crops, but they're the main ones.

Which would be the largest in terms of proportion you would have ?... At this stage,
40 onions.

Good. Okay. And you've been employed there for the last seven years. Prior to that ?... Prior to that I was working for two private companies as an agronomist.

Right. So what are your formal qualifications ?... I've got a Diploma of Applied Science in Agriculture majoring in Horticulture from Hawkesbury Agriculture College. I graduated in 1980.

5 And do you actually control any others, or do you do all the technical work ?... No. I have three people working with me.

Right. So, what's their role, if you could describe that ?... We have agronomists and a farm manager. We also have our own farm at Perfecta and I'm responsible - the farm manager is responsible to me for all the production that we do on our own farm as well as he has roles out in the field as the field officer as well.

10 Right. In terms of the role of the agronomist, can you just describe what that is ?... Well agronomy is crop science. So an agronomist's job is to provide the link between technology and the farmer so we provide the farm with all the information and inputs required to grow the crop to the specification we require for export.

15 At what point do you - at what stage in the life of an onion, if I could describe it, do you stop and start in terms of your advice you give to the company ?... Well, because of the nature of our contract, we are completely responsible for every phase of the production process. We determine which farmers grow onions for us. We decide what variety, what seed, which paddock, which drill, plants to crop. Everything is under our control. We advise the farmer in every respect of production and under
20 our contract, he basically can't do anything that we don't ask him to. So the whole process, with regards to which crop we grow, is completely controlled so that we can end up with a product grown to a specification that we can export.

From there on, once the advice in respect to the growing function is there, do you exercise any further advice or control in respect to the product ?... Yes. My
25 responsibilities include the harvesting and any aspects of the crop. Say, with onions, with the lifting of the crop - onions are lifted, left on the ground to cure for up to four weeks and then I'm responsible also for harvesting the crop and bringing them to the factory to be packed, and I have some ongoing quality involvement in the process after that but basically my function ceases when I get the produce to the
30 factory.

Right. Okay. Have you done any particular studies with onions - or the varieties of onions ?... We've done extensive work on both the breeding of onion varieties and all sorts of things to do with the production of onions.

Right. I wonder whether you could just take the commission through - if I can
35 describe it, the life on an onion, from the very start right through to the stage where it in fact leaves Perfecta's premises ? If you could just relate that to the commission ?... Okay. Right. Well, onions are a biannual plant so we start off the process by buying seed, planting that seed and growing it through to its bulbing stage, which is a half-way process in the life of the plant and all the processes which I've just
40 referred to take us through to the stage where we can harvest a dry cured bulb, grade them for both quality and size, pack them into various types of containers and export them to various destinations all around the world. The process of the plant in that stage that we export, is basically only half way in the life of the onion. Naturally, onions grow from seed, produce a bulb which is a storage form to last
45 through the dry summer of its natural home and then when the autumn rains come and the soil moisture is adequate the bulb produces roots, sends up a seed stem or multiple seed stems, produces a flower, produces seed and the whole process starts again. So, we interrupt that process by taking the storage organism, the bulb of the onion, and exporting it for consumption. It's the case with many different vegetable
50 products. There's certainly nothing unnatural about what we do.

Right. What's the effect of the handling of the onions, in your view ?...Well every process we undertake - most of which are mechanical processes - actually reduce the natural storage life of the bulb. If you left the bulb untouched it would actually last substantially longer than - handling with machines actually encourages the process of break down in the bulb and deterioration in quality. We obviously try to minimise everything in that respect but by handling onions in the volumes that we do, we actually reduce the life - the natural life of each bulb.

Right. Is there anything which you do to in fact prolong the life of the onion in terms of handling ?... Yes, I guess - there's nothing that we can do to prolong the life of the bulb, only minimise the reduction.

Right ?... So we take every step possible to minimise the damage that we do to the bulbs or anything that will reduce the storage or quality of those bulbs because they have - people expect onions to last a substantial time when they buy them. The type of onion that we grow is a long keeping type of onion. It's not an onion which you expect to buy today and eat tomorrow; it's an onion which you expect and last indefinitely up to several months in your house.

Right ?... So we do everything we can to try and minimise the reduction in that natural life.

Right. So do you - does Perfecta just generally handle one type of onion or are there a number of types ?... No, primarily one type of onion.

And what's that onion? Can you describe it ?... Well, we call a Cream Gold onion but it's proper name is Puke Kohe Long Keeper -

Right ?... - and all the onions that we grow are strains of Puke Kohe Long Keeper and in Australia those onions are called Cream Gold.

Right. So just going back to my other question: is there anything that - you take action to minimise, if you like, the deterioration process but do you take any action at all, in your view, to in fact preserve the - or prolong the life ?... No, not under what I would call an interpretation - or the lay person's interpretation of preserving. We make no attempt to artificially prolong the life of the bulbs.

Right. What's the effect of ventilation whilst storing and in fact - or let me ask that question for a start - what's the effect of that ?... It maintains the onions in the condition in which we harvest them. You cannot harvest onions unless they're dry - not under our system. They do elsewhere in the world where they harvest onions green and artificially dry them but we do not do that. We harvest onions dry - that's why we leave them on the ground three to four weeks to cure - and we bring them into the factory and the ventilation is to keep them in the state in which they were brought in. Unventilated, humidity would build up in the storage that we use, because it's quite large - holding up to 12 tonnes - and the produce would spoil. You would get staining, you would get bacterial and fungal breakdown and so forth.

So what happens with - so it's some gaseous reaction is it, which would cause that ?... Well it's a change in the climate; you've got respiration - because onions are a natural product - they're living - they're respiring - producing gas and omitting water vapour - so if you didn't ventilate them you would get a build up of other organisms which live in that sort of environment, and staining which is as a result of it.

So what happens to the onions, particularly those in bulk - packed in bulk - and then shipped - what's the process there ?... Onions packed in bulk are ventilated. We pack them into what's called fantainers which are continual - continually ventilated

containers. And again, if they - if the power was cut off for those containers, the onions would out-turn in very poor condition. They would develop mould on the way.

So that process in the containers - ?... The process -

5 - which are in ships are they - I assume ?... It's on ships.

Yes - which wouldn't be - not very different to what's - actually we've seen at Perfecta on site - is that what you're saying ?... More or less the same - yes.

10 Right. Okay. All right. Just in respect to what we saw in the inspections - where wet onions came in and there was a drying process - could you describe what's occurring there ?... The only time that wet onions would come into the factory, if it rained on the truck and it wasn't tarped on the way between the field and the factory. We cannot harvest wet onions. We can harvest onions that aren't at peak maturity as far as curing but we generally don't do that anyway. The drying stores are used to condition the onions, and what I mean by that is, to remove the outside
15 skin which may be stained or maybe damp but not wet. I suppose there's a distinction there. It's not possible to harvest wet onions. They're not like potatoes; we have to do everything to minimise the contact between the onion and the soil - certainly damp soil -

20 Right ?... - because staining is so critical to the quality of exportable onions. So if onions come in and they've been rained on and they've got some soil staining from lying on the ground, we dry the outer scales to remove them so that you've got a clean exportable product to pack.

So the drying function is for that reason only but not for prolonging the life of the onion ?... It's not - no, it's certainly not to prolong the life of the onion.

25 Right. The evidence previously given by Ms McKean indicated that you didn't - and I quote 'If you didn't dry the onion it would be lost in a short period of time'. What would you say about that ?... If you brought the onions in, in a green, uncured state and you didn't dry them, they would rot very rapidly.

30 Right. Okay ?... Which is the way they do things in cool climates where they don't have the sun to cure the onions naturally.

Do you see in the process which we've seen so far at Perfecta, any change in the nature of the product from the time it comes - from the time it's harvested to the time it actually leaves Perfecta's premises ?... The only significant change in the nature of the product is that we top - we take the top and the roots off the onions.

35 Right ?... Other than that - apart from natural loss of skin under most circumstances - dry well-cured onions will lose some skin - there is no change.

Right. Okay. Excuse me just one moment. I don't have any further questions thank you. Thanks very much for your evidence, Mr Johnston.

PRESIDENT: When you're ready, Mr Baker.

40 MR BAKER: Perhaps if we could just go back to the growing stage and just for my edification you may like to sort of just go back to when you were sort of saying about the harvesting of the onion and in particular how long it's - you leave it - let it grow for - that process - if you could for that - go through that for me again - I beg your pardon ?... Okay. Where do you want me to start?

Well, the seed's in the ground and the onion's growing ?... Okay. Well my responsibility is to make sure that the crop produces and exportable bulb, so we have to do all those management functions which enable the crop to grow to its potential; so we keep weeds, pests and disease under control and we supply the crop with adequate nutrition and manage both the nutritional and the irrigation needs of the crop through to the point where the bulb - I don't know how much you understand about onions - but when the plant is mature the top will fall down.

Yes ?... Okay. Now when 70 per cent of the tops of the crop have fallen down, because there's some genetic variation between plants, they don't all fall down the same day so we determine that 70 per cent -

I understand that ?... - is a - the appropriate for which to undercut the onions and bring them up on top of the ground to start the curing process. That 70 per cent is determined by - it's a factor of - an average, I suppose - and it's where we maximise both the yield because that - once you cut the roots out from under them they stop growing - and it also maximises the skin quality which is so critical for export quality onions.

So once we've undercut the onions and they're brought up on top of the ground into wind rows, we've narrowed the width of the crop from about -

Yes ?... - forty two inches into about 20 inches.

I'll just take you back one second; when the tops fall over, the onions - what is the stage of the onion at that stage - has it reached maturity ?... Yes. It is - no, not in my - it's mature as a plant - as a green plant.

Yes. But does it continue to feed ?... Not if we cut the roots out from under it.

But there's still - there's still - there is still nutrients that it will take from the leaf when it falls over? It doesn't - ?... That's true - yes.

Okay ?... It's a continuous process. An onion bulb is mature in my opinion when it's secured but because of the biennial nature of the plant there is no point - it's a continuous process. But as far as the bulbs are concerned, a bulb is mature when it's reached - when it's fully cured - not green any more.

So you've got it out of the - out of the - out of the ground and you've put it - you leave it there in - hopefully in the sun for a period of four weeks till the onion cures ?... Yes, that depends. I mean there's no set time limit; it just depends on -

Yes - that's understood ?... Three to four weeks is normal.

Yes. The climate - the climate which may - may occur at any given point in time ?... That's right.

And what's the purpose of the curing in the paddock ?... Well it's not possible to handle uncured onions unless you pre-top them. This could get quite involved, Mr President, but as an example, if - an alternative process for us to adopt would be to pre-top the onions before we lifted them - actually mow the tops off, lift onions without any tops, green, and artificially cure them in a curing store by pumping hot air through. We choose not to do that because we don't have to. By undercutting the onions and leaving them on the soil - provided the weather conditions are okay - they cure naturally by the heat of the sun over time. So by doing that the moisture content of the top and the outer scales of the bulb is reduced - they dry down and we can actually handle them with machines. The machines that we use cannot handle green onions. It would just end up a big mess. So it's necessary to cure the

onions. It's also necessary to cure them so that they will last their natural life; if we handled them green they are easily damaged and they would rapidly break down.

5 So really, there's one or two ways of doing it isn't there; you can either leave them in the field to cure or if it's economically possible - feasible - whatever - then you simply bring them into a facility and - I was going to use the word 'cook' - but that's not the right phrase ?... Artificially cure.

Artificially - artificially bring them to their - to maturity ?... Well artificially cure them.

10 Artificially cure them. Thank you very much. So either/or, they are - they're brought to that stage and then the processing of the onion - the packing of the onion - the grading then commences ?... Yes. I would never say that we process onions; we grade them and pack them.

15 All right. Well it's my poor choice of words but - yes - ?... Well, I think it's quite important; people call our factory a processing factory; in my opinion it's not a processing factory, it's a grading and packing plant. That's all we do. We don't put the onions through a process.

Well, my interpretation of a process - ?... Mm.

- is the packing and the sorting and all that but - ?... Okay.

20 But I think you and I agree that's what you do - we don't have any disagreements ?... No, that's right.

25 No. No. No. And I mean while we were there - and the inspection last year - we did actually have a look at the facility there that you do use for drying onions. Now I think you did actually answer the question in relation to that from Mr Fitzgerald but perhaps you may just sort of like to tell us again about what that facility is used for ?... The drying store is to - is used to condition onions. As I said before, you can't - you cannot harvest wet onions. So if onions have had adverse weather conditions in the field, we still have to wait till they're dry before we harvest them, but under those circumstances they - the outer scales get stained both through water and through soil contact. So we bring those onions in and we put them into the drying store to, what we - or what we call 'recondition them' and that is to remove the stained skin so that we can - they will pass as Class 1 Export Onions. The stained onions are class - not Class 1 onions.

I could understand that - yes - yes ?... But the onions have to be dry for us to handle them with our system. We cannot handle uncured or wet onions.

35 That's right. I mean - well, I think we readily accept that the onion is wet, green, then is obviously, I take it, it's soft ?... Well, there's two distinct points there. I mean an onion is either green - it's uncured -

Yes ?... - but it can still be a cured - a wet, cured onion. If it rains on cured onions - they're wet - but you cannot harvest them.

40 Right - okay ?... It would be like trying to harvest wet spaghetti - it's just not possible.

Yes. So the process - the process of curing the onion, while you may point out that it's - you do that to harvest the onion, it's also a process by which extends the shelf life of the onion, doesn't it ?... People do not buy green, storage onions.

I can't say I've ever seen one ?... No. Because that is not the natural form of the product. People expect to buy brown onions cured and brown, and that's their - their natural form. So all we do is take them through to that stage and sell them. There is no market for uncured, green, brown onions.

5 But if you were not to do one or two things; if you simply got the onion out of the field and - and put it in a bag and shipped it, the onion would go rotten, wouldn't it ?... No, not if it was well cured when we got it out of the field.

That's what I'm saying. So you've got to cure it ?... Yes.

You need to cure the onion first ?... That's right.

10 That's it. Thank you very much.

PRESIDENT: No further questions, Mr Baker?

MR BAKER: Oh, I'm sorry - no, sir, I've -

PRESIDENT: No. Okay. Re-examination, Mr Fitzgerald?

15 MR FITZGERALD: Just very briefly, just in respect to this curing process. Mr Johnston, the curing process is a natural process, I assume. Is there anything in terms of - particularly in terms of change in the nature of the product, anything different from allowing the product to naturally cure in the field as there is on your - on the site of Perfecta ?... Onions naturally cure. We interrupt the process by undercutting them -

20 Right ?... - at a particular stage in their development because it optimises the quality of the bulbs that you end up with. During the natural process, once the tops go down, in their natural home which is southern China, the soil moisture would dry out and the onion would naturally cure, but we're not growing onions in southern China, we're growing them in Tasmania and we have to interrupt the
25 process so that we can cure the onions when the weather is favourable in our summer and to facilitate the process that we adopt of exporting. Is that answering your question.

Yes. Okay ?... I wasn't quite sure -

30 So is there any difference in terms of what the product ends up as from curing them naturally and curing them on site ?... Well we don't cure them on site.

Right ?... We cure them all out in the field.

35 Okay. So the drying process - just to clarify this - is simply to remove the outer skin is it - to allow the drying - outer skin to remove - to be removed ?... Yes. We have never attempted to dry - cure - artificially cure green onions in our drying store, so they're probably called the drying stores but they should be called the
reconditioning stores because that's what we do.

So when Mr Baker said 'drying onions', you're not doing that at all; you're simply drying the outer skins so that - to allow it to fall off - is that right ?... Well, that's right. Yes.

40 Okay ?... We're actually taking more than normal moisture level out of that outer skin so it comes off which normally we wouldn't want to do.

Right ?... But if it's dirty we've got to get it off - and it's the only way to get it off.

But to compare an onion of that sort compared to one just taken straight and going through the normal process, ostensibly there'd be no difference - is that so ?... That's right.

Okay. No further questions thank you.

5 PRESIDENT: Yes. Thanks, Mr Fitzgerald.

You may withdraw at this point then, Mr Johnston, thank you ?... Thank you.

WITNESS WITHDRAWN

10 MR FITZGERALD: Mr Broadby is going to give some evidence briefly on the nature of Perfecta's activities and we'd be concluding at that point. So if I can call Mr Broadby.

PRESIDENT: Yes.

DARREN MICHAEL BROADBY, sworn:

MR FITZGERALD: Thanks, Mr Broadby. Just for your - just for the purpose of the record, if you could state your address please ?... 21 Roberts Court, Devonport.

15 Okay. What's your position currently, Mr Broadby ?... I'm a director with Perfecta Produce.

Right. And how long have you held that position ?... I've been there for nine and a half years.

20 So the company - is the company essentially a family company - would that be right ?... It's a family business; my parents and my brother and myself.

Right. Can you describe the total activities of Perfecta ?... Well initially we started off as onion - we started off as a very small onion packing place where we used to basically bring a truck load of onions in, tip them up, put them into bags and ship them off to South-East Asia - that was going back 14 years ago. Since then in recent
25 years we've diversified from onions into also carrots, squash and swedes and exporting those as well and we now have a cherry orchard on site which is an integral part of our operation now as part of the whole - the whole year. In addition to that we've got 400 acres of land which we crop in which we grow anything from poppies to our own onions to swedes, and we've got livestock as well.

30 So do you regard yourself as farmers - would that be the best way to describe it ?... Well, really we - we are a farmer by the nature that we've got our own land and we have to crop that land and get an income off it, but in addition we're a link between other farmers and the export market in that we provide the technical expertise for the farmer to grow a crop, get it all the way through the growing process, get it to us,
35 pack it up, get the quality to the customers' specifications, send it overseas and - and we keep doing that every year - that's the process.

Okay. Do you actually take onions from your own farms as well ?... We do - yes.

40 Okay. All right. In terms of those other products you mentioned - and they're on record - but could you describe the process there? We did see, I think, at Fielding's Way in respect to squash, but could you describe how you handle those other products ?... The other products such as swedes, for example?

5 Yes?... They - well again, they're contract - contract grown by the farmers as well as we do grow some ourselves. We have them hand trimmed in the field by workers and then they're brought in wooden bins and we wash them, get all the dirt off them and we cool them overnight and they're put into the container the next day and shipped away.

10 Right. And in your view, is that very much different - do any of the products differ greatly in terms of how you handle the products?... Well the process - the process for any of the products is much the same in that we only harvest - we harvest the product when the product is at its most mature stage that's fit for exporting, bring it in, package it up, discard any defects and ship it away. There's no - we don't actually - we don't dice the product up, we don't freeze it, we don't package it into pre-packs or anything like that; it's all in bulk ready for customers at the other end to then pre-pack up or do whatever to then send to their customers.

15 Right. Now is there any difference in terms of onions which Perfecta are dealing with compared to the other products in terms of how you handle them?... Onions - onions is a product that doesn't need any water to clean them; they - if the onions are dry - dry when they're harvested, when they come in the outer skins will naturally fall off - which are dirty - they'll naturally fall off just by handling them and generally an onion only has maybe three or four - what we call field skins or -
20 not - no, sorry, not field skins - cured skins - and those skins are what has to the last the onion all the way through to the customer so when the customer buys it it's still got a skin on it. Our process will naturally knock some of those skins off in the handling and generally we like to get the first skin to drop off because that's the dirty one and then we're shipping a clean product. The other processes involve - like
25 with swedes - washing the dirt off the outside before its packed - that's the only difference.

30 Right. With any of the products you handle - your company handles - is there any change in the nature of the product - you know, a fundamental change in the nature of the product in what you do?... They're no different to - you could go out to the paddock yourself - whether it be onions, swedes or carrots or whatever - if you go out to the paddock, pull them out of the ground, either chop the top off or cut the roots off, wash those products that need washing and the products are no different to really what we have. The only difference is where, such as like swedes, would need refrigeration just to get the field temperature out - down to a normal storage
35 temperature.

Okay?... That's the only difference.

Right. Which - that was a good move -

MR BAKER: I think we may need a short adjournment.

40 MR FITZGERALD: It was there for a purpose anyway. No, that's all right, we can continue - I've done it before so I've been pretty experienced in this sort of thing - I must keep my gesturing down to a minimum - the - I have to just - re - recollect my thoughts - but I will -

PRESIDENT: Come to the surface again, Mr Fitzgerald.

MR FITZGERALD: No, that's fine.

45 We heard evidence - and I'm back on my track of - some train of thought now - we heard evidence that what - what you really have is more of a - not a processing plant but really just a packing - grading and packing plant - would you agree with that?... Yes, well if you consider that going back when we first started the business, as I said

before, the truck - we used to have the staff waiting on the grading line, waiting for the truck to come in. The truck would drive in with the harvested onions, tip the truck up, they would go straight up the elevator, across the sizing machine, onto the inspection tables into the bag. And we did that for many years. It was only when the
5 success of our business meant that we had to harvest more product than we could physically pack at one time and we also had to take advantage of good weather conditions that we needed to have some sort of storage as a means of part of the packing process. It was only a matter of bringing the product in, holding it for
10 maybe one or two days - maybe a week - maybe two weeks at the most - packing it up and sending it away.

So when did this change occur in your operation - you know, starting - getting from small to big, if you like ?... Probably about eight years ago.

Right. And you were involved at that time as well ?... I was - yes.

Right. Okay. Is - in terms of that change, is there any significant impact that might
15 have on the nature of the product, particularly the onions you're growing in terms of how you handle it ?... No. Our quality back then - our finished product was no different then to what it is now. If the bulb is - if the onion bulb is of good quality and well cured at the time of harvest there's nothing we do that makes the bulb any better - whether we - whether we tip it straight out of a truck and put it in a bag or
20 whether we hold it for a week or so.

Right. We've heard evidence from one of your expert staff of course in this area; is there any reason you wouldn't use a cool store - and I understand you may have some material on it in respect to that. Could you describe that to the commission
25 ?... That's right. Well basically cool storage - it is possible to cool store onions. You can put them into a cool store and you could hold them at any temperature from, I guess, the current ambient temperature right down to zero or below zero. I have some information; it's come out of 'A Guide to Food Transport for Fruit and Vegetables' -

Right ?... - and that basically just - it just tells us that research has been done to
30 say that the harvest quality of onions from day one where there's no change in temperature - it's just ambient temperature - they probably only have a natural storage life to be then of good quality for sales of maybe - if they're held at, say, 20 degrees - maybe only for about 40 - 50 days. If you reduce the temperature by putting them into some sort of cool storage - say you put them in cool storage at
35 zero degrees, you could hold those onions up to about 240 - 250 days and still maintain some quality, but the quality would deteriorate slowly over that time.

Right. So in terms of that - that evidence, how does your drying of the skins process
40 relate? Does that in any way, in your view, prolong the life ?... The drying process is again only to basically break that outside skin off the onion and we do that by using heat, if necessary. We don't always use heat; sometimes it's just natural air using the outside air temperature to blow past the onions as they would in the field, and as soon as that skin is dry enough to break off once we go and put it through the grading process, the - yes - there's no difference.

Right. Could in fact that shorten the life of the onion by, in your view, given the
45 evidence you've just presented - the drying process ?... Well, certainly if we were to - if we were to over dry those skins, the - more skins could fall off and we would actually end up with an onion with maybe only one cured skin left on it, which, if that cracked, it's unacceptable to our customers; it has to have a properly formed skin. The onions - the perfect situation is to have an onion brought in from the field
50 with all its skins on including its field skin - and that's the outer skin - that's the first skin - that skin will be a little bit dirty - but if the onion is totally dry and that

outside skin is just sitting there nice and loose like it normally is, that will drop off in the bag or through the grading - the grading line and the customer will up with, when he opens his product at the other end which could be eight weeks later - he will - he's quite happy if he has skins in the bag - loose skins in the bag because
5 that means they've dropped off naturally and underneath he's got a clean, well-cured onion.

Right. Okay. We've seen your evidence and we obviously thank Perfecta for that opportunity, but could - what we haven't described on record is the process in detail, I think, if you could, and also the roles of the individual employees from the
10 time that they are received at 'intake' - I think that's the terminology is it - ?... That's right.

- to the time when they actually leave your plant. Now I wonder if you could just describe that to the commission ?... Okay, well firstly the onions - the onions arrive in trucks and they're - basically what we call 'intake them'; we tip them out of the
15 trucks and we put them into some sort of storage. Now that storage could be half tonne bins which is wooden bins which are then just stacked up and held. They could be into the containers which we saw which have got the fans in the bottom, or they could be into the, what we call, the drying stores to - to have the outside skins conditioned before they're packed. So that's the - that's the first part. The staff
20 involved in that area is basically a forklift driver and it's only one person. He moves the containers or the bins around as the trucks tip them up. There's one person involved with that. Then when we go to pack the onions, the onions are either tipped out of the wooden bins or tipped out of the containers and all the trash and rubbish that comes in naturally from the field is removed. Usually a fan takes away the dust
25 and then we have people who - staff on the line just throwing out the dirt and other debris, et cetera before the onions then have the tops removed. So at that point in time you should only have onions and everything else removed. The tops and the roots on the bottom are then trimmed off with a scroll topper and from there the onions go through the grading line process to - just along conveyor belts - to the
30 sizer and then sizer then splits the onions into two sizes, then - the big onions go one way and small onions the other way and then we have two more sizing machines which then individually size in increments of five millimetres - the onions into the different requirements that we need for our customers. After that process of sizing we then have - generally ladies - who are inspecting the onions for quality and
35 all they're doing is basically looking for any defects on the onion skins or shape defects. The onions then go from there into the bags or back into wooden bins or can be bulk loaded straight into a container loose ready for shipping.

So how are they loaded - just - are they just - ?... The conveyor basically goes straight inside the container and as the container is filling up at the back the
40 container moves backwards and the onions just gradually fill all the way up the container.

Good ?... Those containers - all our containers that we use, use a system called a fantainer; it's basically a conventional shipping container with a 12 inch fan sitting in one end of it. That then draws out through - through from underneath the floor
45 up through the onions and expels the air out through the door.

Sorry, if I could interrupt you; are other products you deal with shipped similarly or not ?... The swedes go in refrigerated containers.

Right ?... So they're obviously purposely refrigerated.

Right ?... The squash go in refrigerated containers only from a fruit fly point of view; that's the only way we can ship them without the intervention of fruit fly.
50

So fantainers are - it's particularly for onions ?... Fantainers are only used for onions; they were developed for the onion industry and in fact they were developed in Tasmania -

Right ?... - going back some probably 16, 17 years ago.

5 Sorry, I interrupted you; you may want to just complete the process ?... Well, the process - okay - so we've now got them into either bags - bags which are then stacked on pallets and stacked up and then driven into the containers with the fork lift or they're in wooden bins which again are just driven into the containers with for lifts or in bulk. We then - we then load the containers onto the trucks, the trucks
10 then take them to the port. They're plugged in on power at the port and then loaded on the ship, plugged into power on the ship and off for about a six or eight week voyage to our customer. Now when our customer receives those onions, generally they will take them out of the container and put them into their warehouses. Their warehouses are just normal - normal buildings and they will store them there for
15 anything up to two months untouched - not - they don't undo the bags - they don't do anything with them and they then use them to supply the supermarkets over about a two month period which is the window that we have when they don't have their own new seasons product.

20 Okay. So that completes the process ?... That's basically the process from where we received the onions at the factory through to - through to the customer.

Right. Is there anyone specifically, in your view, engaged - or generally - I can put the question - engaged in a preserving function ?... I guess the determination of what 'preserve' means but just to sidestep that a little bit, we - we send onions to Blue Banner in Hobart. Now Blue Banner pickle the onions and to us that is what -
25 that's preserving the onions. At our - what we do, is we take a natural product from the field, we store it for however many days we need to prior to packing; we don't store it to make the product any better, we don't store it to cure it, it's all ready to go once it comes off the field unless of course that outside skin is dirty and we need to crack it off in which we use the drying stores.

30 Okay. So the answer, what would be, there's no-one -no-one engaged is there ?... No, that's right. There's no - because there is no process of actually changing and/or preserving it, and there is no people involved with that.

Right. We've - you've seen the transcript of the evidence from Ms McKean; have you any general comments to make about that evidence ?... I would just say that Ms
35 McKean obviously is a food technologist who - who probably is very - very up to date on her knowledge of food technology, but we don't employ a food technologist. Our technology we need for what we do stops basically at receipt of the product and that's where Patrick Johnston and his other agronomists - once the product gets to us it's got to be ready to be shipped. We can't do anything in our process to make
40 the product better; we can only - we can make it worse but we can't make it any better or we can't hold it indefinitely or change its life - its storage life or anything like that.

Right. Okay. The evidence also indicated that in terms of the food technologist's point of view that there was no need - no - sorry - there was not a necessity to
45 actually change the nature in the product to create a preservation function. How would you see that in the terms of the activities which you undertake at Perfecta ?... Well, going back to when we first started, we used to bring - the truck used to tip the onions straight onto the grading line and that process hasn't really changed. Okay, we've had to - we've had to put one step in whereby we have somewhere to
50 hold the product but the onion - the onion itself is still no different - is still no different from

back when we used to tip them in that way. It means that the storage means is only a means of handling a higher volume.

5 Right?... Similarly we used to also store onions in half tonne bins. Now there was no fans, there was no - the only air there was, was the air blowing through the - through the stores from wind and -

Okay. Well, in your view, is that any different to - or substantially different to what you're doing now?... Well, we - we wouldn't consider we're doing anything different than we were doing - yes - 14 years ago.

In terms of those -?... Okay - we would be doing one thing different.

10 Yes, okay. Go ahead?... Our curing - not - sorry - not our curing - our drying stores are - are the only thing that is different in that we now have an insurance policy, if you like, for when the onions aren't fit. For example, this summer we hardly used it because the onions were in such good condition because the weather was so good.

15 Okay?... It is only there as a backup when weather conditions make the outside skins dirty and we have to break it off.

Right. I think you talked about - I think there was some evidence also about using rubber rollers and that was in some way seen to be preserving because it was preventing bruising, et cetera. What would you say to that statement?... Well, certainly it's - we have to do everything we can to minimise damage points on the product. Every damage point will ultimately result in it breaking down and that goes from - that goes right from the work that's done in the field with the harvesting right through to loading into the shipping containers. We have to be very careful that we don't damage anything. So whether it be rubber rollers or whether it be padding on something or reducing the height that one conveyor drops to another - things like that - that are all acts of trying to look after the product, but I wouldn't say we are preserving it in the sense that it's got a longer life.

Okay. I've no further questions. Thanks very much, Mr Broadby.

PRESIDENT: Mr Baker.

30 MR BAKER: You made a comment in relation to storage temperature and I'd like to offer you a quote and perhaps you might like to comment on it. I'll identify the quote from a book called 'Onions and their Allies' by Henry A. Jones and Louis K. Mann which I'll tender as an exhibit.

MR FITZGERALD: Is it a best seller?

35 MR BAKER: Well, I'm sure it was. I think they must have sold three copies in the last 20 years - but one of the most critical factors in onion storage is temperature - and he makes a reference to yellow globe storage-type onions which I understand is the onion you predominantly grow. They found that sprouting storage was influenced very little by humidity but increased with each increase in temperature whereas rooting increased with humidity and was little influenced by temperature. 40 To keep bulbs in a sound dormant state they recommended storage at 32° Fahrenheit - whatever that is these days - I've lost track of that.

MR: Zero degrees.

45 MR BAKER: Zero, is it - and with a relative humidity of 64 per cent. So it's important though that there needs to be some - some form of temperature control?... You're asking me that?

Mm ?... Well, no, we would disagree because in our natural environment we don't have hot temperatures during the day -

5 No ?... - and we don't have cold temperatures during the night in our summer when we're harvesting onions, so therefore our natural storage, or for that matter, the natural curing process on the field, is - is okay, for the onion is not going to deteriorate because of our weather conditions. When we bring the onion into our factory, the - just normal ambient storage, no heat, no humidity control - of course if it was to rain for 60 days straight and everything was damp for 60 days or 30 days even, where everything was damp, our product would go off because it would an
10 unnatural environment, but it can certainly withstand changes in humidity and changes in temperature so long as they're not dramatic.

15 Yes. I suppose actually - really the issue that I was trying to get to was, that there is actually a - you actually provide a facility for the onion to be stored in an area which promotes - promotes its shelf life ?... It doesn't - no - it doesn't promote the shelf life. The onions -

Well, what happens if you just -

MR FITZGERALD: Well, I think he should be able to answer the question.

MR BAKER: Well -

20 MR FITZGERALD: He was in the middle of answering the question and I think it should be allowed to be answered ?... We don't - we don't make - we don't create shelf life by what we do. The shelf life is there from the day they harvest the onion.

MR BAKER: Then I'll ask the question another way around: what would happen if you simply piled all the onions into a shed ?... If the piles weren't too big -

25 No - just one pile - took all the - 7,000 tonne of onions and put them in a shed - what would happen to them ?... The onions on the bottom of the stack would probably break down in time. The onions on the top of the stack around the edges would be fine.

30 No disagreement. So therefore, when you then put them in your - in your storage facility they are designed to achieve an outcome aren't they ?... They're designed to hold the product prior to packing. It's no more, no less.

But it's designed to achieve an outcome though, isn't it ?... The outcome is to hold the product in its current state before packing.

In its best possible state ?... We can't make it any better than what it is from when its harvested.

35 But the onion will deteriorate, will it not ?... It will live for about nine months before it will actually break down and shoot or - if it's fit and healthy the day it's harvested it will last - it could last up to nine months without any spoilage at all. Perfect quality, perfect skin, perfect shape, no rot.

40 It is susceptible though to bacterial attack though, isn't it, once you slice the onion top off isn't it ?... No, definitely not.

It's not ?... The top - the top is only a cosmetic thing. By removing the top it's only cosmetic. The onion bulb is already sealed at the neck at the time - prior to harvest as part of the curing process. It's a natural product; it's not -

What if I was to offer you a quote from a Mr Poulter from Roberts Vegetables who speaks of a disease affecting onions called botrytis alli - I hope I've pronounced that correctly - who makes the following observation in a book entitled - or a paper entitled 'Improving the Control of Botrytis in Onions' which was sponsored by the
5 Tasmanian Government, where he says: The rot appears in the neck and at the side of the onions through cuts, et cetera ?... Well, I disagree, because botrytis as it actually is called is - happens in the field. It happens at some point during the growing process where hail or damage from tractors or wind or something like that where it damages the actual leaves of the onion and that then goes down through
10 the neck of the onion because it's still all connected - it's all still growing through the - through the - from the top right down to the bulb - once the onion is then cured, if those diseases et cetera are already in there it will break down anyway no matter what we do. We can't arrest, we can't stop those sort of processes if they're already there at the time of harvest. If it's inherent in the bulb after harvest it will
15 break down no matter what you do.

Well he does actually recommend a way of fixing it but we won't go into that - or attempt to ?... Well, we would love to hear about it because -

Well - ?... - neck rot - botrytis - are big problems for our industry and there's nothing we can do in our process -

20 Yes ?... - to address that.

That's right. As I understand it, he does make a reference here to: The most effective procedure to fix it in the crop is if the crop is removed from the field within 48 hours and dried for seven days at 30° celsius ?... Well, okay, we can't do that, so -

MR FITZGERALD: Mr President, it's difficult responding to questions like this
25 without identifying who the individual is, what his qualifications are for all those things. It's simply someone's opinion, so I just simply make that for the record.

PRESIDENT: I think the witness has been able to respond to the questions that have been put by Mr Baker.

MR BAKER: I'm sorry, I didn't write the guy's qualifications down - they just - just
30 wrote a book.

PRESIDENT: It sounds as though you might be able to enter into some arrangement to provide the information for Mr Broadby later on at a cost - or price.

MR FITZGERALD: Give you a bag of onions.

MR BAKER: I'll just go back to the issue of storage again. The method of storage is
35 critical to - to the long term life of the onion though, isn't it ?... No, it's not. We can store onions in bags, we can store them in wooden bins, we can store them in containers which hold about 10 tonne, we can store them in trucks. I mean we can store them in lots of ways.

So what - ?... The only thing that is critical is if the bulk of the onions - if there's a
40 huge pile in one spot where there's no natural air, that can be a problem, but our stores are all designed to have natural air flowing through them.

But isn't that the point though that we've made previously - is that you actually induce air into the - into the bins by use of fans ?... We blow air past them - that's right.

45 Yes. And for when they're sent overseas in bins - ?... Yes.

- or containers - ?... Yes.

- containers, there is actually a fan - ?... That's right.

- that's used to extend the - you know - or improve the quality ?... No. No. We can't improve -

5 Maintain the quality ?... No. We can't -

Are you maintaining the quality ?... We - we just remove the natural processes of the onion respiring - we just keep that air moving so that it doesn't build up. Yes, if you didn't do it, they would spoil, but it's no different to leaving them on the paddock or putting them in a wooden bin and leaving them sitting in a shed. The process - as long as there's air moving the onion will not spoil. It's only when the air is shut off the onion will spoil.

Yes, precisely ?... But we're not improving anything.

But you're maintaining it ?... Well, that's the idea, isn't it? We want our customer to make sure that what harvested is the same as what he gets. We'd be silly if we weren't.

Precisely ?... Right.

Thank you very much ?... You're welcome.

MR FITZGERALD: Is that it?

PRESIDENT: Yes, thanks, Mr Baker. Mr Fitzgerald.

20 MR FITZGERALD: Oh, just very briefly. Actually, I must admit, I thought botrytis produced a good sauterne not a good onion but it's obviously the same product - same process.

PRESIDENT: No, botrytis doesn't produce a good sauterne.

MR FITZGERALD: Isn't sauterne? Which sort of wine is it then?

25 PRESIDENT: The growers of sauterne would be very offended.

MR FITZGERALD: Sorry. I'm not a wine buff obviously. I thought it was involved in one grape product anyway.

30 Just taking that over - or the point which Mr Baker mentioned before is, in terms of temperature control, you don't have any temperature control - is that your clear in your plant ?... Apart from our drying stores where we can - we can blow through air through at, say, 20 degrees or 25 degrees to just dry that outer skin to crack it off, that is the only temperature control that we have in the process.

So - so - so in terms of when your onions are stored there, it could be a cold day or a hot day you just vary according to the temperature ?... It makes no difference - no.

35 Okay. All right. The - again just - and I - this appears somewhat repetitious and I don't wish to be but the blowing of the air is just - the fans in the containers is in no way changing the nature of the product ?... The - no - because again we have different storage methods. We use wooden bins a lot to store product. Those onions are no different to those that are in -

Okay ?... - the containers with fans.

And if there is any - and that - those containers also move onto the ships and are transported that way. I suppose if you take that argument through to its logical conclusion you're also, according to Mr Baker's argument, preserving whilst - whilst
5 they're being shipped - would that be so ?... That's - yes - that's right - because we're trying to keep - we're trying to keep the quality as good - as good as we can from the point of harvest. Naturally they're deteriorating just through its natural process but we - yes - we have to try and look after it.

Okay. I'm not sure whether the - those - seamen involved in those companies would
10 be - enjoy being employed pursuant to the Vegetable Preservers Award, but that's a natural conclusion - that's the natural extension of it.

I have no further questions thank you.

PRESIDENT: Thank you, Mr Broadby, you may step down now.

WITNESS WITHDRAWN

15 MR FITZGERALD: How long will you be, Phil?

MR BAKER: Oh, two or three hours.

PRESIDENT: Now you've made certain submissions as to the wording of the scope, Mr Baker; have you got further submissions to make on your application?

MR BAKER: Well, insofar as the application of the scope is concerned, I thought
20 most of that was covered this morning in the - which the - the - the situation which was abated this morning between Mr Fitzgerald and myself as far as the application of the scope is concerned. If there are specific questions which you may like me to address on top of that, I'm happy to do so, but I think basically the situation is, as far as the scope provision of the award is concerned - and I think perhaps I should
25 have made a point this morning that - that whereas this matter started out as an issue with Perfecta, I think it's sort of moved on a step from there; that - and clearly, as Mr Fitzgerald has indicated, that on the issue of the scope - the application - it - he has viewed it and took it quite seriously that the actual - this - this application went far beyond the - its application to Perfecta.

30 And I - and being realistic in the - in looking at the situation, I think that is clearly the case. The scope clause, as far as the award is concerned, I think is - is quite clear. You need to - a reading of it makes reference to vegetable preservation. Mr Fitzgerald is no doubt going to argue that vegetable preserving - the phrase 'vegetable preserving' needs to be written - sorry - needs to be read in the context of
35 the whole of the scope clause, and that is, the - from vegetable preserving down to fruit juices and jam production and so on, and you need to read it within that context.

I suppose the difference that we would see is that as far as the scope is concerned, that the three items need to be written - sorry - need to be read individually. You
40 need to look at what constitutes vegetable preserving; you need to look at the issue of jam and jam making and you need to look at the issue of fruit juices.

As far as the vegetable preserving side of the award is concerned, I think our position has been made that - that we view that to be somewhat different than simply taking a vegetable or fruit and sticking it in a glass jar and sterilising it and
45 sealing it. What we're saying is that if there's a process undertaken which preserves a vegetable - a process which extends the life of the product - of an article - a raw

food item - then you are in fact preserving that - that fruit and we do - and I do have some quotes - probably is appropriate that as far as food preservation is concerned that I read into transcript a quotation. Unfortunately I was unable to secure the - a copy of this, but this is -

5 PRESIDENT: I hope it's the genuine article.

MR BAKER: Oh, yes, it is. This is actually a quotation from a paper which was prepared by the lecturing staff of the Food and Wine Science Section of the Regency College Hotel School of TAFE in South Australia, and they make these comments - and this is in fact an introduction into the book: Raw foods are neither stable nor
10 inert and will deteriorate in quality through the actions of spoilage, micro-organisms or enzymes originating from the food itself. So spoilage will occur unless some preservative action is taken to slow down or halt its progress. The reaction that damages the quality of the food are usually hydraulic - sorry - hydrolytic - I'll spell that for the record - h-y-d-r-o-l-y-t-i-c - or oxidative in nature and are catalysed by
15 the presence of enzymes naturally present in food itself or originating from micro organisms which are associated with the food. Food preservations -

PRESIDENT: I hope they were organisms, actually.

MR BAKER: You're quite right - organisms - which -

MR FITZGERALD: I missed that.

20 MR BAKER: Well -

MR FITZGERALD: It might reveal an inner thought.

MR BAKER: - food preservation stops or greatly reduces the rate at which the reaction occurs. Now I think that really sums up what we've - what we've been on about and I think the comments which we've made and the comments which were
25 also made by the witnesses this morning, indicates that as far as the vegetable itself is concerned there is - there is a process - and I know that they find objectionable the word 'process' - but there is a process put in place which actually stops or inhibits, reduces, whatever, the growth of the micro - the micro organisms to stop the rot of the fruit involved.

30 So I think as far as the scope is concerned that is what we're on about - that's what we're seeking to achieve - that it's not simply a - as I indicated earlier - taking the fruit and sticking it in a jar. And there are some other quotes which I suppose I might as well continue with at the present time in relation to - to this, and I have a series of exhibits insofar as that is - that issue is concerned.

35 Now -

PRESIDENT: Yes - these would appear to be your first exhibits in this matter, Mr Baker.

MR BAKER: Yes.

PRESIDENT: So do you want them to be numbered in any particular order?

40 MR BAKER: No, I think I've got myself totally confused down here though. Perhaps if we took - I think I handed them up to your associate as 'Commercial Vegetable Processing' -

PRESIDENT: Yes.

MR BAKER: - and if we mark that 'one'.

PRESIDENT: Exhibit B.1.

MR BAKER: 'Vegetable Processing' as B.2 and 'Onions and their Allies' as B.3.

PRESIDENT: Very good.

5 MR BAKER: If I just take the first one and I'll introduce it for what it is. This was a
book published by - or entitled 'Commercial Vegetable Processing' Second Edition
edited by Bor Shiun Luh - I hope I've pronounced that correctly - from the
Department of Food Science and Technology at the University of California, Davis,
California and Jasper Guy Woodroof, Department of Food Science, University of
10 Georgia - sorry - University of Georgia Experiment, Georgia. And this was a
quotation I took - I've taken at page 244 of that publication when it talks about
onions. And it simply says:

Onions (Allium cepa L.) are largely preserved by dehydration.

15 Now I just introduced that as a comment about what we're talking about; about the
fact that you need - the preservation of onions is about - about drying them and it
goes on to talk about putting them in jars and so on, as we were - as we're talking
about as far as the four.

The second quotation I'd offer is from a book entitled 'Vegetable Processing' and the
editors are David Arthey, Deputy Director and Colin Dennis, Director-General of
20 Campden Food and Drink Research Association Chipping and Campden in
Gloucestershire and it goes on to talk about other kinds of - other preservation
methods and that talks about:

*This chapter covers those methods of processing vegetables for future
consumption -*

25 And then it talks about:

Drying is one of the longest established methods of food preservation -

- drying is one of the longest established methods of food preservation and we've
heard that this morning about the situation as far as onions are concerned -

30 *- which occurs naturally, for example, with seeds. It combines the benefits of
microbiological and physiochemical stability with reduction in weight and
transport costs and has other advantages in handling storage.*

Now while it's not the - these quotations are not specific to - to the evidence which
was rendered, it provides similar quotations about what is perceived to be the issue
as far as the handling and storage of onions is concerned.

35 And finally, the third one is the book entitled 'Onions and their Allies', Botany,
Cultivation, and Utilization by Henry A. Jones (Ph.D. Chicago) and Louis K. Mann
also from - who has a Ph.D in Chicago - from Chicago. And on the - on the - on the
first page of that, there are - it talks about the harvesting and post-harvesting of
onions:

40 *Many operations are performed in getting a mature onion crop from the field to
the consumer, but -*

- and it goes on to talk about:

- the major ones of harvesting, curing, grading, storing and transportation.

It goes on to say:

5 *These operations vary from country to country, from district to district, and even from farm to farm; but, in general, practices which are found most suitable for a region are followed there rather consistently. We consider harvesting in the somewhat limited sense of getting the crop out of the soil, and curing as the drying process that is applied to bulbs to improve their keeping in transit and storage. Harvesting and curing are frequently quite distinct, especially when the bulbs are cured artificially; but they may be*
10 *continuous or simultaneous operations in the field.*

And then it goes on to talk about grading. So I simply offer those as some comments from other people, particularly the last one in relation to what they consider the issue of curing may be. And it may be - and I suppose certainly there has been witnesses produced during these proceedings - one from ourselves and one from -
15 and two - I'm sorry - from the employer about what is meant by curing, what is meant by preservation in particular, but I think as far as our position is concerned, it remains consistent with what we originally sought, and that was, that any process which extends the shelf life of a product is in fact preservation because what those quotations and the earlier quotation which I provide from the Food and Wine Science Section of the TAFE College in South Australia indicate, that if you don't do something to - to stop or desist the rot - or, sorry - to desist - or assist the vegetable or the fruit, it will simply rot.
20

Now we simply don't accept the situation that - that by simply leaving it on the ground and then bringing it in and putting it in a bin and then selling it the way in which it's been outlined this morning and indeed at the previous hearing, is simply -
25 is simply that. What we're saying in the middle of all of that there is in fact a preservation function which takes place. And that preservation function is when the onion is brought from the field, cured, and then there is a process which is put in place either artificially, as was pointed out with the use of the bins of the drying chamber, or alternatively, the process which is used by the company as far as the storage, the holding and the handling of the product until it reaches the market. And that is what - why we say that there is a preservation function in place and that again goes back to the application of the scope phrase of the award when it talks about vegetable preserving. And - and of course our submission is, is that when you
30 examine the scope clause in the ward that it should be treated as three separate points and not, as Mr Fitzgerald will point - sorry - as Mr Fitzgerald will no doubt argue, that in fact you need to read the scope clause within its totality and make a decision based on the whole of the application of the scope clause.
35

I'm sure there is something which I've overlooked to mention and no doubt my colleagues may remind me in a moment but at this point in time I would conclude my submission there subject to any questions of course from yourself, sir.
40

PRESIDENT: Yes, thanks, Mr Baker. I haven't - I haven't any questions. I understand your submission.

MR FITZGERALD: I'll be very brief in response.

45 PRESIDENT: Yes, thanks, Mr Fitzgerald.

MR FITZGERALD: Thank you. I would certainly refer to my earlier submissions - and I'll do it well and truly within 40 minutes - I'd certainly refer to my earlier submissions in respect to the impact of any declaration you make in respect to section 43 and that I think, even though that's not a consideration in terms of

section 43 as a whole, it's a consideration, I believe, which the commission should take into account.

5 Notwithstanding that, Mr President, I believe that the application which the union has brought before you in this - before you is in fact without any foundation. Quite clearly it hinges on a technical - a technologist's point of view - and I don't bring any disrespect to the evidence of Ms McKean - but as I said earlier, it is - it may in fact be correct in terms of her points of view - and she clearly indicates in her own evidence that from a lay point of view that differs from that of a food technologist's point of view. And I think that's the nub of the issue here.

10 In terms of the rules of interpretation, the ordinary English lay point of view is the one which prevails and you could pick someone walking down the street in Devonport to -

PRESIDENT: I don't think you can add 'lay' in there.

MR FITZGERALD: Well -

15 PRESIDENT: The ordinary English -

MR FITZGERALD: - the ordinary English usage - yes - and I relate that to a non technologist - if I can call it that. But certainly from the ordinary English usage - from a reasonable person's point of view, preservation in - does not in any way relate to what's been suggested by Mr Baker. Preservation, from an ordinary English usage point of view relates to a change in the nature of the product and quite clearly the evidence which has been presented and not challenged in that regard doesn't in any way change the nature of the product.

20 Mr Baker indicated that we should be reading the terms of the scope of the Vegetable Preservers Award in isolation. I submit that you cannot do that. In fact, that's really contrary to the rules of interpretation. There is, as you know, rules have been handed down by this commission in T.34 -

MR BAKER: Of 85 - 30 of '85.

MR FITZGERALD: - 30 of '85 - I think I might have even been - had the misfortune of being involved in those proceedings but - and that was -

30 PRESIDENT: Is that what the problem was?

MR FITZGERALD: I'm sorry? Yes, it might have been what the problem was, but yes, I can recall it well because it related to the Hospitals Award from memory. But -

PRESIDENT: I think it was.

35 MR FITZGERALD: - and it was before your predecessor - predecessor, President Koerbin, in those days - but those rules have in fact been adopted in a decision of the federal commission in Robe River which was quoted in 1988 AILR at 398, and clearly the emphasis is on ordinary English usage and in terms of the way those words are associated with others within the award, and in my submission, it is not possible in any way to divorce 2(b) and (c) from 2(a). And clearly, in terms of (b) 40 which is sauce, soup - including soup concentrates or vinegar making, or (c), which is producer of fruit juice or vegetable juices, clearly there is a distinct and fundamental change to the nature of the product and in that regard the intent of the Vegetable Preservers Award, in my submission, must be read in accordance with those with (b) and (c). And clearly there is -

PRESIDENT: You don't think the use of the word 'or' is fairly powerful - that it doesn't say 'and/or' .

MR FITZGERALD: I don't believe so, Mr President, in terms of the rules of interpretation. And the other thing which I don't think you can ignore is - and
5 although we don't accept the argument because we've put extensive argument here
this morning in terms of the Vegetable - sorry - the Food Preservers Award applying
- you would have to also read it in terms of appropriate classifications and
descriptives in those classifications. Now in my submission - not that I have brought
10 the Food Preservers Award with me but I'm familiar with it - all the classifications
within that award relate to functions involving a change in the nature of the
product.

Now as the evidence which Mr Broadby and the agronomist, Mr Johnston, gave,
clearly there is no one individual or group of individuals engaged at Perfecta who is
involved in the changing of the nature of the onions. So I think it's mischievous to
15 suggest that they can be read separately despite the word 'or' in between them. It's
clearly an award which deals with products which come in a particular state and
there is human intervention to in fact cause the state of that product to change and
that may be in the form of changing oranges into orange juice or may be involved in
the - in terms of changing chickens into chicken soup or vinegar - the making of
20 vinegar from its raw state.

So, in my submission, the application made by Mr Baker certainly doesn't have any
validity.

In terms of Perfecta's operations, clearly the operation is an integrated farming
operation. It has many aspects to its operation including the farming of livestock
25 and that is part of Perfecta's operations and cannot in fact be considered in
isolation. And clearly in terms of that integrated operation - and that's clearly
contemplated within the scope of the existing Farming and Fruit Growing Award
where it talks about - and it seems repetitious but I think it's necessary to put at
this point in time - preparation - in the preparation, sowing, raising, packing and
30 harvesting of crops including grains.

Now quite clearly there is a packing function here and that's all - that's all they're
doing. There's no change in the nature of the product and that's, in my submission,
an essential aspect of the - of - in terms of interpreting those words 'preserving'. And
there must be, in my submission, some change to the nature of the product.

35 From a food technologist's point of view, the evidence we heard was that there
doesn't have to be. That may be from her point of view. But from an ordinary
misusage point of view to preserve in that respect must, in my submission, mean
simply not just maintain - and obviously the company - and I think it was even
suggested that by using rubber rollers, in my submission, in a normal English usage
40 point of view, that's absurd to indicate there is some preserving function by the use
of rubber rollers.

Now all that is simply doing is ensuring that the products aren't damage and
maintained as much as they are in the current state.

Now in terms of the - the exhibits which have been produced, I don't think they in
45 any way add to the argument put forward by Mr Baker. There's no dehydration
process; they are in fact quite outdated and may not be even relevant exhibits, but
there's no dehydration or curing process on plant - in the site - which is suggested
by the exhibits. It's indeed questionable why they have been presented at this stage
and why this evidence wasn't - wasn't gained through the witness evidence - the
50 food technologist, Ms McKean. And I just don't think they really need any form of

addressing because they - it doesn't address the circumstances which relate to Perfecta, and that's the circumstances in which this interpretation is being made.

As I indicated, maybe facetiously with Mr Broadby, if it's relating to the blowing of air which was seen to be a major plank of the union's argument, that function of course, as Mr Broadby indicated in his evidence, continues through the shipping process. So do we naturally conclude that those people handling the products through the shipping are in fact in some way involved in the preserving function. Now that would be an absurd extension of that argument. But that's the natural extension of the argument by Mr Baker. And I think the more we look into this argument the implications and consequences appear to be more and more absurd in my submission - in my view.

So for all those reasons, we would submit that the application is seeking to encompass the activities in the onion grading and storage and distributing operation of Perfecta's is in some way covered by the scope of the Vegetable Preservers Award in our submission that - that application should be rejected and the awards which apply and have been properly adhered to by the company in the past and up until recently until that change was made by a requirement to observe the Australian Workers' Union agreement, that situation should be, to coin a phrase, preserved and allowed to continue and the application by the union should be rejected. If it pleases.

PRESIDENT: Yes. Thanks. Mr Baker.

MR BAKER: Just to conclude, there's just - insofar as the scope - the operation of the scope clause is concerned, I think - and to quote one of Mr Fitzgerald's comments - I think it's absurd to simply take the clause and say, you've got to read the whole thing in its entirety and apply it because that way this award would simply - the scope clause of this award would not operate as indeed would not the scope clause of many other awards of the commission which are phrased similarly. And this award is designed exactly that way. You are -

PRESIDENT: I don't think - I don't think Mr Fitzgerald was saying that the industry had to have all those three components in -

MR BAKER: Did I miss - did I mishear him?

PRESIDENT: - it in order to be covered by the award. I think what he was going to say - what he was trying to say was - you've got to read the types of activity together so that there is a -

MR BAKER: Oh, I see. Oh -

PRESIDENT: - something such as the processing of fruit juices and the making of sauces and soups -

MR BAKER: Yes.

PRESIDENT: - and vegetable and fruit preserving. I think that was the point that was - Mr Fitzgerald was making.

MR FITZGERALD: That would be - certainly - it's in terms of the interpretation - that would be my view, Mr President.

MR BAKER: Are you sure? Are you sure?

MR FITZGERALD: Absolutely certain. Absolutely certain.

MR BAKER: All right, well in that case I withdraw the comment. But I just - just perhaps to conclude, I think, you know, the evidence, I suppose, has been led from one side of the table as opposed to the other side of the table. One side of the table is saying 'preservation' means you've got to change this - the product.

5 PRESIDENT: Yes.

MR BAKER: And we're saying -

PRESIDENT: And the other side says 'preserving' means you've got to maintain it.

MR BAKER: Maintain it. Maintain the product.

PRESIDENT: Yes. Yes - a nice argument. I'll have to decide then, won't I?

10 MR BAKER: With the wisdom of Solomon.

PRESIDENT: I don't know about that. Can you - it interests me though, the introduction of the federal award into the discussions. Mr Baker, do you have any clear knowledge of the scope of the federal award?

15 MR BAKER: Well, it's - the scope of the federal award is far greater than the - than the application of the state award. The scope is greater - and perhaps Ms Urquhart might in fact be able to answer that question far more - with a greater deal of confidence than I can.

MS URQUHART: Yes. Certainly.

PRESIDENT: Yes, thank you, Ms Urquhart.

20 MS URQUHART: The scope of the Vegetable - sorry - the Food Preservers Award - the federal Food Preservers Award is much greater than that insofar as -

PRESIDENT: And what - how - what does it go to in - ?

MS URQUHART: It goes into some forms of meat processing and other areas as well -

25 PRESIDENT: Yes.

MS URQUHART: - so it's much broader.

PRESIDENT: Well what does it do in terms of things such as the packing and dispatch and harvesting of onions and vegetables?

30 MS URQUHART: It certainly covers the preserving of fruit and vegetables, it covers the packing of fruit and vegetables and it covers also the dispatch of fruit and vegetables - so it does go much broader than this scope.

PRESIDENT: Yes. Yes. Would you - thank you for that. Mr Fitzgerald.

35 MR FITZGERALD: Well, I just think it an opportunity - that would - that was not my recollection at all and I think it needs to be brought to the commission's attention.

PRESIDENT: Well, what I would like to do then is both of you - both parties provide me with the scope of the federal award and your comments as to the scope and -

MR FITZGERALD: Certainly, I'll be happy to do that.

PRESIDENT: - I'll - do that in writing and -

MR FITZGERALD: Yes.

5 PRESIDENT: - I'll take those things into account and you might share them with each other.

MR FITZGERALD: Yes. Certainly. I mean we're only speculating but was my - and I think as Ms Urquhart is - but in my submission the scope, which is extensive from memory, relates to quite clearly changing the nature of the product not simply storing and distributing.

10 PRESIDENT: Well, let's not have an argument about it at this point. If you could -

MR FITZGERALD: I just think that should go on the record and not be left unstated.

15 PRESIDENT: - if you'll provide me with - each of you provide me with a scope and your comments on the scope and exchange your comments with each other, and if I don't hear from you within, say, a fortnight after that exchange, I'll consider that, you know, you've accepted the submissions and - on each side in terms of - in respect of the scope. I don't think there's anything else we need to canvass at this stage. No - no further comments from anyone? No? All right, well, the hearing at this stage is concluded. I hope we don't have to come back again, and of course my
20 decision is reserved and I'll await the receipt of the information from both sides in respect of the scope of the federal award. Thank you very much.

HEARING CONCLUDED