

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3847 of 1992

IN THE MATTER OF an application by
the Tasmanian Farmers' and
Graziers' Association to vary the
Farming and Fruit Growing Award

re superannuation fund exemptions

COMMISSIONER IMLACH

HOBART 31 July 1992

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: I'll take appearances.

MR K.J. RICE: If the commission pleases, RICE K.J. I appear on behalf of the TFGA Industrial Association, sir.

COMMISSIONER IMLACH: Thanks, Mr Rice.

MR G. COOPER: If the commission pleases, I appear on behalf of the Australian Workers' Union, Tasmania Branch, COOPER G.

COMMISSIONER IMLACH: Thanks, Mr Cooper. Well, Mr Rice?

MR RICE: Thank you, commissioner. Sir, the purpose of this application by the TFGA Industrial Association on behalf of seven employers is to seek exemption under the provisions of clause 29 of the Farming and Fruit Growing Award, and that exemption is from those employers being required to pay into the - one of the two nominated schemes in that particular award, and being able to use schemes other than those that are in the award that meet the operating standards for occupational superannuation.

We intend to bring to the commission's attention documents which will substantiate, we believe, our claim that these employers should be exempted; that they do meet the criteria as laid down in the award for exemption.

Briefly, sir, if I could go to a little bit of the history of this particular award. Previously in Tasmania - or prior to the 13th of March, in Tasmania, two awards covered the rural industries; that was the Agriculturists Award and the Horticulturists Award.

Since that time parts of horticulturists, that is the fruit growing sections, the vegetable section and the seed - the seed growers section have been lifted out of the horticulturists. All of the agriculturists, and several other industries have been incorporated in a new state award, to - which was known as the Farming and Fruit Growing Award.

That became effective as of the 13th of March 1992, and incorporated within that award were occupational superannuation provisions, which were not included in the other two awards at that time, sir.

At this stage I'm of the - my instructions are, I've been advised that the AWU are going to oppose each and every application, and no doubt they'll notify that they're - the commission of their reasons in the not too distant future.

What I'd like to do at this particular time, if I may, commissioner, is introduce to you sections of - the actual section of the award that -

COMMISSIONER IMLACH: We'll call that, TFGA.1.

MR RICE: Sir, what I - what I've handed up as an exhibit, is clause 29, the superannuation clause out of the Farming and Fruit Growing Industry Award, which is an award of this commission.

Essentially what this clause does, it names two funds, Tasplan and the Australian Farms Superannuation Plan, as approved funds for the purposes of occupational superannuation contributions, and it's effective as from the 13th of March 1992.

It has definitions going to an eligible employee; means - under clause - subsection (c), means an employee for whom a classification appears in this award whether employed on a full-time or a casual basis.

And at subclause (e), it goes into definitions, sir - it goes into how or the procedure for exemptions.

And if I may move - may read onto the transcript:

The Tasmanian Industrial Commission may grant an exemption to an employer for making contributions into TASPLAN (as defined) or the Australian Farm Superannuation Fund (as defined) in the following circumstances:

(i) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to 1 January 1992 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to 1 January 1992, and have continued to be paid since that date -

That's the criteria on which we are basing this application, Mr Commissioner. It also, on - in subclause (f) - Procedure for Seeking Exemption:

(i) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 13 June 1992 -

Sir, our application to the commission was made on the 10th of June 1992.

- for hearing and determination.

Such application shall contain the following information:

(a) Name of Fund into which the funds are to be paid.

(b) Evidence of the funds compliance with Commonwealth Operational Standards.

(c) Summary of Structure and Benefits.

(d) Level of Administration Charge.

(e) Any other relevant information.

(f) What date the initial contributions was paid.

(ii) Any application shall in the first instance be considered by the union(s) party to the award -

Sir, we have discussed this matter with the AWU before the application was made to the commission. And since the application was made we have not been able to reach any agreement. So that puts us back into No.3 - that the matter is to be determined by the commission.

Sir, we would submit that we have met the criteria of the application being made prior to the 13th of June 1992, and that we will produce evidence to support the claim that all these funds were having contributions made into them prior to the 1st of January 1992.

And perhaps if I could hand up each of the applications, but as one for all the applicants, sir.

COMMISSIONER IMLACH: Yes. Well, we'll call this TFGA.2, but we'll mark them (a), (b) and (c), I think, Mr Rice. What do you think about that?

MR RICE: There should be seven of them there, Mr Commissioner.

COMMISSIONER IMLACH: I've got five.

MR RICE: Five. Oh, should be five., Mr Commissioner, right.

COMMISSIONER IMLACH: Should be five, is that right?

MR RICE: Beg your pardon, two more than I thought, five.

COMMISSIONER IMLACH: Right. We'll call that TFGA.2. And so TFGA.2 and E.A. Hirt & Co Pty Ltd will be (a); Lee Bros (b) - oh, hang on, we might be right there; R.L. & G.L. Langworthy (c); R.H. Loane Pty Ltd (d); Abblitt Pastoral Co Pty Ltd (e);

and Viewmont Pty Ltd and Linden Pty Ltd (f); and McKenna Bros (g). How many does that make? (a), (b), (c), (d), (e), (f), (g), seven.

Proceed, Mr Rice.

MR RICE: Sir, in dealing with -

MR COOPER: Excuse me, commissioner, you say you have McKenna Bros one in that exhibit as well?

COMMISSIONER IMLACH: I have, yes.

MR COOPER: Sorry, I don't have that one.

COMMISSIONER IMLACH: Don't have McKenna Bros - that's (g).

Mr Rice, just to help you, and I hope to - what I'll be looking for, certainly go through the names and so on, but I just want to see the commonwealth letter and the date it was paid. They're the key items that I'll be interested in. But certainly go through the names.

MR RICE: Thank you, sir.

COMMISSIONER IMLACH: Has that helped?

MR RICE: Yes, sir.

COMMISSIONER IMLACH: Right.

MR RICE: Mr Commissioner, if we can deal with our first application, that is an application on behalf of E.A. Hirt & Co Pty Ltd. They are seeking an application - they are seeking to use a fund, the AMP Superleader Fund. The - through the document you will find the certificate from the Insurance and Superannuation Commission. You will also find a letter from McCarthy Financial services, which on that says:

On December 22, 1986 the initial contribution to this fund was paid and has been paid at a rate of 3% of gross wages.

Which establishes, sir, that this fund has been in existence prior to 1 January 1992, that is from the 22 of the 12th 1986.

Sir, I have - I've erred on the side of perhaps giving you too much, rather than not enough, as far as the summary of structure and benefits of the fund goes, in that I - I must admit that I'm not - I don't profess to have any expertise as far as superannuation goes. And that is a summary of the fund as published by the AMP Society.

COMMISSIONER IMLACH: Yes. Well, Mr Rice, I think it all adds to the - to the weight of your application, but - and I'm quite happy to receive the additional information. In other words, I wouldn't recommend that don't produce it. But, on the other hand, subject to any objections from Mr Cooper in due course, I'm satisfied on what you've put forward.

MR RICE: Thank you, Mr Commissioner. If I can go to the next application, sir, which is Lee Bros. Lee Bros are seeking an exemption from their fund to use the National Mutual Personal Superannuation Plan, which forms part of the National Mutual Retirement Fund. That fund, sir, was - or contributions into this fund on behalf of - or Lee's paid on behalf of their employee commenced on the 30th of the 6th 1989.

We have the Insurance and Superannuation Commission document, dated the 3rd of January 1991. We have a letter from National Mutual explaining the - the benefits and summary of the fund. And in that, sir, it does support this policy as being in force since the 30th of the 6th 1989.

And there's another document from, again, financial services people, Creese & Ransley, which supports this other insurance broker in this instant, Mr Commissioner.

The next one, sir, is for the employer R.L. & G.L. Langworthy. They have a superannuation plan, the RL & GL Langworthy Superannuation Plan, which forms part of the AMP Masterplan. This plan was commenced on the 28th of the 9th 1990. Sir, over the page from the covering sheet is the letter from the Insurance and Superannuation Commission dated the 3rd of January 1991 regarding AMP Masterplan.

Actually there are several letters from that - from there, sir. There's a letter from AMP which indicates the initial contribution to the plan was received on the 28th of the 9th 1990, Mr Commissioner. And again, we've taken the liberty of providing the commission with a full copy of the - of the summary of benefits and so forth, as provided by AMP.

The next document, Mr Commissioner, application is for R.H. Loane Pty Ltd. They are seeking an exemption to use the AMP Masterplan, as we spoke about previously. In this organisation the plan has been in place from the 1st of the 9th 1982. We have the Insurance and Superannuation Commission document, the 3rd of January 1991, plus another document 7th July 1989. A letter from AMP which supports the claim that the initial contribution, sir, was made on the 1st of the 9th 1982.

The next application, Mr Commissioner, is on behalf of Abblitt Pastoral Co Pty Ltd. They are seeking an exemption to use the Simple Super Fund, which is a National super fund, sir. We

have the summary of benefits. Again, we've taken the liberty of providing the commission with everything that National Mutual put out as their summary of the plan.

And we also have a date, being May 1990 when the initial contributions were first made. I have a letter from the Insurance and Superannuation Commission to National Mutual, dated the 3rd of January 1991 regarding the Simple Super Plan. I have a letter from National Mutual, again, down at point (f):

The Fund commenced and initial contributions were paid in May 1990.

Sir, the next - the next application I'd seek to amend the employer's name. When it first come out it was in the name of Marshall. I'd seek to - Marshall in this instance - or the Marshalls are actually going to be the employer - employees, rather than employers, because they're - what they are seeking exemption for is their companies, Viewmont Pty Ltd and Linden Pty Ltd. This rather a different application to the others that we're dealing with, sir. Both this and the next application that I'm going to put forward deal with the actual owners of the companies but under the law the way that it's structured is that these people would be found to be under the new superannuation guarantee legislation would be found to be employees of those companies.

Now I realise it would be a long bow to suggest that these people may come under the award from the point of view of determining their wages and so forth, seeing that they are the actual employers of the - in the real sense of the thing, albeit they operate in a company situation.

However, with superannuation being to the fore and the upheavals - upheavals that can occur within families, they are seeking to legitimise their particular superannuation schemes so that they are able to use them and if anything were to come in the future regarding a split up in the company they have a legal backing there which says these particular plans that they were using and being paid into have been authorised by the commission, and we would see that, sir, we have the letter from the Insurance and Superannuation Commission regarding Viewmont Pty Ltd Superannuation Plan which says it meets the criteria as laid down by the commission, and we have a letter from Atkinson Gibson, chartered accountants, which details the financial structure and charges as levied against the plan and the plan itself started for M.L. Marshall, one of the directors, in June '61, for C.F Marshall in June '87 and R.L. Marshall in June 1988.

We believe these are the legitimate expressions of interest to seek an exemption on behalf of the Marshalls, sir, given the high priority or notoriety, if one could put it that way, that

occupational superannuation has received, because whatever happens they will - they will be caught within the superannuation guarantee net.

Sir -

COMMISSIONER IMLACH: Yes, just before you go on there -

MR RICE: Yes, sir.

COMMISSIONER IMLACH: - you applied to amend the original application which I'm not against; what do you say to that, Mr Cooper?

MR COOPER: Mr Commissioner, I'm not against any variance in the application excepting that, well when I put my submissions, without going to the subject matter of them, we'd have to be questioning whether these people are in fact eligible employees.

COMMISSIONER IMLACH: Yes. Right, well, I'll grant the application to amend.

MR RICE: Thank you, Mr Commissioner. Sir, we would - just going on to that - Mr Cooper pre-empted what I was going to refer to. If we go back to TFGA.1, 29(c) under definitions, eligible employee means an employee for whom a classification appears in this award, whether employed on a full-time or a casual basis. As I said, one would be taking a long bow if you're going to say the owners of the company could be given a classification, but I would believe it could place us all in a difficult position if - if ever - well if I was to put it this way - if the son, Mr Marshall's son, were to claim that he was being underpaid, for instance, within the terms of the award, we wouldn't have any choice but to see that particular person. There's no exemptions within the award for family members. I would see most definitely that he would come in under the classification of a station hand of one description or another.

COMMISSIONER IMLACH: I'll put it another way, Mr Rice, as I see it, even though he's not receiving a weekly wage, he is covered by the award, that we presume he's being paid above the award rate, or he hasn't made an application to be paid the award rate to his employer or her.

MR RICE: That would be a fair comment, more likely that he probably isn't being paid the award rate of pay, sir. I suggest he's probably buying his share of the farm with what the award rate of pay ought to be, or that the time he puts in.

COMMISSIONER IMLACH: But he's still eligible -

MR RICE: But I would suggest that he's still eligible.

COMMISSIONER IMLACH: Yes.

MR RICE: Eligible -

COMMISSIONER IMLACH: Yes, to claim.

MR RICE: Sir, that's - deals with the application on behalf of Viewmont Pty Ltd and Linden Pty Ltd. The next application is McKenna Bros, and I would seek also to amend this particular application, Mr Commissioner, in the application that was in the name of G. McKenna. I would seek to amend the application to McKenna Bros.

COMMISSIONER IMLACH: Right.

MR RICE: That being the family company which employs the two brothers and their wives. They're in the same situation, sir, that they've operated - they work for a family company, they are the owners of the company, they do employ their wives from time to time as documentation will suggest and again we're seeking exemption under the same provisions as what we did for Viewmont and Linden Pty Ltd. There is the documentation from the Insurance and Superannuation Commission on hand dated 22nd - 28th May 1992 approving their scheme. Bonney Vertigan & Hortle, chartered accountants, there is a summary of the scheme and so forth, as these accountants administer that particular scheme, and again there is another letter from Bonney Vertigan & Hortle which says the superannuation plan does include the two - the wives of the two directors also, sir. And I should find somewhere where - the plan first commenced on 28th June 1979.

Commissioner, in summing up -

COMMISSIONER IMLACH: Just before we go any further -

MR RICE: Sorry, yes.

COMMISSIONER IMLACH: - the - Mr Rice sought to amend that application, Mr Cooper, do you accept that amendment.

MR COOPER: Mr Commissioner, I thought I had a substantial argument with respect to eligible employees, given your previous comments on the record. It may be in my best interests not to support the amended - the amendment to the application for either this one or the preceding one, and that would have the matters dealt with forthwith.

COMMISSIONER IMLACH: Excuse me - I was only just - what's the - reflecting what Mr Rice was saying and whether that indicates that I agree with him or not, you still have the right to put your submissions against what he's submitting.

However, I'm just going through a procedure - he's asked for those - the words to be changed, that's all, and that's how I'm putting it to you.

MR COOPER: Well - well, commissioner, with all due respect, I appreciate that, but it may be in our best interest for the organisation I represent, to say to you, with respect to McKenna Bros and also the previous one, Viewmont, Linden, that we would not be supporting the request to vary the application.

COMMISSIONER IMLACH: Right.

MR COOPER: If the commission pleases.

COMMISSIONER IMLACH: Well I still grant it. I grant the request.

MR RICE: Thank you, commissioner. On - sir, in summing up, we believe that the criteria required by the commission is to grant an exemption to the scheme, other than the schemes mentioned in clause 29 of the Farming & Fruit Growing Industry Award. The criteria is laid down at clause 29(f) of the award and the commission needs to satisfy itself that that criteria has been met.

We would submit, sir, that we have produced to you, documentation which supports our claim, which supports that we have met the criteria as laid down in 29(f) of this - of our - of the award, and we would urge the commission to grant the applications as sought. If the commission pleases.

COMMISSIONER IMLACH: Yes, thanks, Mr Rice. Yes, Mr Cooper - when you're ready.

MR COOPER: Thank you, commissioner. With respect to Mr Rice's opening comments re the compliance with the award, we'd have to place on the record that in fact the TFGA did discuss the application for exemption as required in the - in clause 29 of the Farming & Fruit Growing Award. They actually advised us that they would be lodging applications on the day that they were actually lodged, so we did have discussions on that day.

We have had subsequent discussions on two or three occasions and the union, for its part, is concerned on a number of fronts, commissioner, and they go to - Mr - comment - Mr Rice commented on his experience and knowledge with respect to superannuation, and I'd have to say that - that our total understanding of superannuation which is a very complicated issue, is in fact limited. However, having made that generalisation I think it would be important, commissioner, just to go to one of the funds that are in the award, and that

is Tasplan, and it has been our position all along as a union that Tasplan should be the fund that would apply.

And the reason that we would say that, that it is an industry fund - a multi-industry fund and when we look at the Farming & Fruit Growing Award and the incidence of its application and how the people that work in this award do also work in other industries, we have concern there with a duplication of funds and how that will affect people with respect to their superannuation entitlements.

And one of the reasons we support Tasplan I suppose is that it is a multi-industry fund, it has no entry fees, it has no exit fees. What I think might be useful, commissioner, if I could just, without sort of seeming to pushing the barrow of Tasplan too hard, I think it would be worthwhile to tender some exhibits on Tasplan, speak to them briefly before we go to the content of Mr Rice's submissions.

COMMISSIONER IMLACH: Yes, Mr Cooper, I'm agreeable to hear what you're saying, but I don't see it as relevant or advantageous to this hearing to compare one plan with another. If you're proposing to do that, we ought to go off the record and discuss it a bit further before we do that, but if you're merely pointing out the general advantages of Tasplan industrially, I'm quite happy to receive that. I don't want to go into - I don't think it's my role to compare the performance or the advantages of one fund over another.

MR COOPER: Well, it was my intention, commissioner, to give a broad overview of the benefits of a multi-industry fund as opposed to a single employer fund. It was also my intention to show the performance of Tasplan, but I will take your advice there and I'd be only too pleased to discuss that off the record -

COMMISSIONER IMLACH: Yes.

MR COOPER: - prior to continuing my submissions.

COMMISSIONER IMLACH: Yes. Perhaps we'd better go off the record for a minute, Gay, thanks.

OFF THE RECORD

COMMISSIONER IMLACH: Right, proceed please, Mr Cooper.

MR COOPER: Thank you, commissioner. Having heard your comments off the record with respect to the way my submission was going, I'll certainly amend that now I'm on my feet. I will certainly do that and I will then speak to each

application that Mr - Mr Rice has put to you without doing a comparison between funds.

One of the things with respect to clause 29 of the award quite clearly states that an exemption may be - may be granted by the commission, as Mr Rice pointed out, in the following circumstances: the fund must be established prior 1 January, it must have been - contributions must be equivalent to 3% and it must have been for employees prior to 1 January 1992 and there must have been complying - a complying fund - it says there in (ii), where an employer can demonstrate a special and - oh - other than an approved fund - for an approved fund, and also in that other clause - it must be an approved fund.

When we go to 'Approved Fund', commissioner, with respect to Definitions, (c), at page 35 of the award it says:

- shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

- which is the OSA standards. Now what that basically means is, that the employee fund is provided with a self-assessment form and that self-assessment form is then sent off to the ISC, and as a result of that then the ISC do issue a certificate of compliance and if we go to each fund - individually we go to E A Hirt & Co Pty Ltd, we find that there is ISC compliance certificate issued for the year of income, 1988-89.

Now it would be important to dwell on that point, commissioner, because I do know of other funds who have certificates of compliance for each year that they - they comply and the reason they do that is, if they don't comply with the ISC standards annually, then they're not entitled to a tax exemption so that means that if they don't comply that the members' benefits are eroded with respect to additional taxation that is - that is to - that is to be paid. So with respect to Hirt, I see that the - the exhibit which is TFGA.2(a) does contain an ISC compliance but it is for the year of income 1988-89 and it is not current.

So I would question whether that fund is still an approved fund in accordance with the award. I also - if we go to the next one which is Lee Bros which is TFGA exhibit (b), we find again that the ISC compliance certificate is for the year of income 1988-89, which is some two or 3 years ago, so again would question whether that fund is a complying fund in accordance with an approved fund.

If we go to TFGA exhibit (c), we find again, the IFC Compliance Certificate is dated '88-89. I would question that in the same manner as I have done for the previous two.

If we go to TFGA.2 for R.H. Loane, we again find that the ISC Certificate, which has been tendered as an exhibit, is for the year of 1988-89.

For Abblitt Pastoral the - the ISC Certificate, again, is for the year 1988-89.

Now, when we go to the last two exhibits for Viewmont and Linden, and (g), the ones that Mr Rice sought to amend, which we would not of allowed to amend, these funds are having discussions with Mr Rice, are actually set up by the company for the company directors.

Now, what we would have to look at, commissioner, with respect to that - that part of Mr Rice's exemption is the eligible employee, as defined. And under the superannuation clause that's contained in the Farming and Fruit Growing Award, we do find the eligible employee means, an employee for whom the classification appears in this award whether employed on a full-time or a casual basis.

And if you go to the classification structure in the award, which is contained in clause 7 - Definitions. It starts at page 4 of the award and goes through to page 7. It maybe useful just to spend some time with respect to that.

We have a casual employee and a dairy farm employee, and then we have the eligible employees as a farm and orchard hand level 1, 2, 3 and 4. We also have mechanical plant operators in there.

Now, with respect to these people who actually run their business, they are the owners of the place, they are the company directors. I would suggest that I'd agree with Mr Rice, in that it is drawing a long bow to say that a company director is a:

Farm and/or Orchard Hand -

Say:

- Level means a person with at least 12 months experience -
- and who is capable of performing efficiently without supervision any of the tasks reasonably required of him/her which may include -

And it lists a number of functions. And I'd say that the same can be said for all the classifications within the award. That you are the company director, you are the owner of the business, I can hardly see someone standing up here and

arguing that you're an eligible employee as per an award employee, which is the question that's being asked.

And for those two - two exhibits of Mr Rice's, (f) and (g), we find that we have a fund that's been set up by the companies, it is controlled by the companies with respect to their influence over investment. It is for the people that own the companies. And I would suggest that those two funds do not qualify as funds that the commission could grant exemption in respect to the award provisions that go to eligible employee.

So, on both those funds I would suggest the commission could not grant application on the basis that the - the fund itself doesn't go to eligible employees. It's a fund that covers the company directors. So I would reject those two out of hand as not being funds that have application with respect to the provisions of the award.

We would then, in going back to the - the other five, have to ask the question of the commission that the superannuation provisions are explicit; an eligible fund with respect to the definitions, at clause 29(c). Approved fund, sorry. I will repeat it:

- shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

And I would suggest that a big question mark must be raised with respect to the funds that Mr Rice has submitted to you today, and because the deed of compliance is in fact 1988-89 and not current.

Now, in closing, commissioner, I did have more substantial submissions to put to you than that, but they did go, as we spoke off the record, into a comparison. Now, the other thing I would say in general submissions before closing, is that what we are talking about here, we're talking about the farming industry in Tasmania. And we do have a number of people employed under state and federal awards.

And while it's not the jurisdiction of this commission to deal with federal awards, we also have superannuation provisions in those awards. And what I would urge the commission to consider in closing, before it grants application, is the multiplicity of funds will not serve anybody who is an itinerant worker within this industry. And this industry does have a high incidence of casual employment, it does have a high industry of itinerant employment.

And the reason that that happens is because of the nature of the industry. It has its peaks and it has its troughs, it has its busy times and it has its slow times. And during the busy

seasons we quite often see an influx of people, even if it's to do a bit of fencing, if it's to do a bit of harvesting, if it's to do a bit of cropping or it's even to help with the animal husbandry on the farm.

So, what we will see is if we have exemptions granted to these people, whether these funds can in fact provide to our potential membership or our new employees, provisions that will in fact give them their full award entitlement of 3% superannuation contributions.

And the reason I say that, commissioner, is because various funds have a varying degree of fees applicable. They also have a varying degree of exit fees and roll-over fees. And I only say that in general observation without comparison, because it's a very important point. What the award entitles an employee to is 3% of his ordinary time earnings, as defined. And the ordinary time earnings are quite clearly defined in the award. And we have a fund that - that high fees et cetera, and we have employees travelling from one farm to another, going from one fund to another, you will see an actual reduction over time in their award contributions.

And it's a very essential part of award superannuation, that if you roll over a fund, that fund must remain as a separate fund. For instance, if someone came to, say, Hirt and rolled over their Tasplan contributions from a previous employer into the Hirt Fund, the Tasplan contributions just don't go straight into this fund. What happens is they are kept as a separate identity and there is a fee charged for them. And the same would happen if someone came out of Hirt and rolled over into Tasplan, they would be kept as a separate fund.

And the reason that that happens is because it is a requirement at law that the amounts that are in each fund must be kept separate and maintained. Now, I do know, for instance, that in Tasplan there is a minimum fee on that. And I have tried to investigate these others to find out what the fees are, and it's very difficult to get hold of those - those actual figures.

But that's another consideration, commissioner, that I would ask this commission to take on board, and that is a duplication of funds in an industry, that see a predominant mix of people that do travel from industry to industry. And what we find though too, commissioner, is that the people that are in this industry tend to stay in it. I know my father-in-law has worked in this industry since he was 25, he's now nearly 60. And the same can be said for a lot of his workmates in the same area.

So, if they're working from farm to farm I would suggest that any duplication, while it may be advantageous to the person

who is making application, it may not advantageous to the workers.

So, in closing, commissioner, I would ask - I have advised on the record that, first of all, we oppose the exemptions sought by the TFGA. We oppose the amendments sought by the TFGA. And we would ask the commission not to support the - the application for exemption as provided by the TFGA. If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mr Cooper. Just so that it's on the record, my response to your, shall we say, quashed attempt to - to seek to compare the funds, I think that's a fair assessment. I just put on the record here that, as I understand that clause 29 - Superannuation, it - the clause does specify two plans to apply in this award.

In other words, at the original hearing the - whoever heard it and made a decision, clearly indicated that only two funds ought to apply in this industry. In other words, there should not be a multiplicity of funds, as you say, Mr Cooper.

However, despite that, the award - the decision did provide that for exemptions, that they may be granted. And that's quite clear. It gave that power to the commission. And it also set out the procedure.

Now, my understanding from that is, that the purpose of putting that in was to cater for those employers who already had the schemes running prior to the implementation of the Tasplan and the other plan. And if that was able to be established then the award was to say that exemptions may be granted.

Now, I see that as nothing more than the opportunity for those who had schemes running prior to the advent of this clause to continue to do so. And whilst I understand your arguments, I think they have been accepted for the future and from the date of operation. But the opportunity for exemptions to be granted was provided in the award, and that's how I take it.

So that, subject to any other objections - and you have named some - I'm satisfied that those listed in this application have complied with the requirements of the award and that they ought to then be granted an exemption.

Having - I won't say, dealt with that, Mr Cooper - having made that point, it's then open to you to do what you think about that. I come to the matter of the operative date of the - if we take TFGA.2(a), as an example, E.A. Hirt & Co Pty Ltd, and the Insurance and Superannuation Commission letter. And as you have rightfully pointed out, it relates to a year '88-89. Now, at this moment I'm not sure whether that means that the plan is acceptable for 1 year only or continuously.

And I just say that I'll have to make my own enquiries as to that. I, in previous matters, have accepted a letter of this form as evidence, and it hasn't been disputed before. So that I will investigate that; inform the parties of the information that I've come across; and then, if necessary, recall the parties perhaps to see what can be done one way or the other.

I must say the purpose of a recall would be for Mr Rice to produce further evidence. If he were able to do that, I repeat, I would be satisfied.

Now, having said that on that point, we come then to the TFGA(f) and TFGA(g). Again, I'll have to consider this further, because I think it's a reasonable proposition you've put up Mr Cooper. And I have, at this stage, a mixed view on it. So that I'll have to consider it in relation to those matters.

Yes. All right. Thanks, Mr Cooper. Perhaps we'll hear what Mr Rice has to say about all that?

MR RICE: Thank you, commissioner. Sir, the exemption procedure as prescribed in clause 19(e) and (f) of the Farming and Fruit Growing Industry Award, to my knowledge, isn't what one would say a standard clause throughout every award administered by this commission. However, from my knowledge, it is the exemption - or the exemptions and exemption procedures, albeit the dates may change a little bit, apply to the majority of awards administered by this commission.

What I'm saying is, that if this one isn't out of the ordinary, the procedure to be adopted is, I'd suggest, applies in - right across the board.

It was with some concern that I heard Mr Cooper speaking about Tasplan all the time, because there are two plans in this award; the Australian Farm Superannuation Plan, which is the plan I'd suggest would apply to probably 85 to 90% of the people under this particular award. Particularly those that are of a itinerant nature.

There is a federal award which operates in Tasmania, the federal Pastoral Industry Award, of which is the Australian Farm Superannuation Plan is an approved scheme. Tasplan is not. And as they move from farm to farm, most of them do - of the itinerant people - are covered under the Australian Farm Plan.

I would see the multiplicity of funds. I can understand that, and I accept what - what you say. That the way the exemption procedure is structured, it's to cover people who had schemes in place prior to the introduction of the superannuation provisions, rather than from here on in. Then they must -

they have to go with one of the two schemes, as mentioned in the award.

This award will cover some, probably, 2,000 - 2,000 to 3,000 employers. It has the potential to, if they only employ on a very casual basis. We are applying for exemptions for seven. I think it needs to be put into perspective when we're speaking about a multiplicity of funds.

And again, I would see a situation that it would be the full-time employer - it would be the full-time employee of these employers, the longstanding employees that the - that the employers have put onto their occupational superannuation prior to it actually coming - becoming law and being implemented in the award, that will stay on to be - will stay on the schemes that we're seeking exemption for.

In many instances, and I recall dealing with the Pastoral Industry Award, for instance, and we've sought exemptions for the majority of these schemes under the Pastoral Award, sir. And if I were to use the shearing industry, for instance, the shearers have never come under - what if the pastoral had sought exemption from AMP Superleader for his full-time employees, he's never looked like putting the shearing industry or anybody on that scheme. They've gone under the industry scheme.

And that's how I'd see the - this particular operating, say, in the vegetable industry with the itinerant workers, or in the fruit industry with the itinerant workers. They would go under one of the industry schemes and the other be reserved for the - for the full-time employees.

I haven't much more to say about classifications (f) and (g). They are there. I would see that both these people under the terms of the current super - well, I don't think we have legislation at the moment, to my knowledge, for superannuation guarantee levy, but it will, I'm told, when they fix the papers up in mid August, it will become law and effective from 1 July of this year.

But these people, the directors of these companies, will be deemed to be employees for the purposes of occupational superannuation. They are seeking to protect themselves from possible prosecution by having a scheme in place and being able to use that scheme.

Also, commissioner, we're in a situation where I spoke about upheavals. These people have their wives and their sons in this particular scheme who could well argue - I would argue vigorously against their point of view - but, could well argue that they are employees of the company and bound by - for all purposes, by the award. And that's that I wish to make there.

Why I disagree with that approach, it would be something I see as perhaps being arguable.

The Compliance Deed, as I see it, I'm not - I'm not familiar with how the - the inner workings of the Insurance and Superannuation Commission. I note the majority of the letters that come through are dated January of this year, albeit they relate to the '88-89 annual return. It's my understanding that dealing with something as complicated as superannuation and when the books come through they naturally all have to be audited, and it's a very complicated procedure that they go through.

So, whether or not that's the standard, commissioner, that it takes that long to get through the system. I can't tell you, I don't - I don't know.

On balance, we've looked at it. The procedure, the seeking exemption is a standard procedure that applies through the majority of the awards administered by this commission. We believe that we have complied with all the requirements of the exemption provisions, or the provisions for seeking exemption. And I can only urge the commission to give careful consideration to these particular matters. And in doing so we would seek that he grants the applications for exemption as requested. Thank - if the commission pleases.

COMMISSIONER IMLACH: Yes. Thanks, Mr Rice. I just point out to the parties that the commission is - whilst it endeavours to follow reasonable procedures and precedents and so on, it's not bound to do that. And in that context, Mr Cooper, I had thought maybe I'd cut you off, or whatever. Do you want to say anything else?

MR COOPER: Oh, not really, commissioner. I mean, we can tit for tat here. A couple of Mr Rice's opening remarks weren't quite accurate, but really I think - I think you have the gist of the argument from us. I was going to put some substantial argument and tender some exhibits in respect to the funds and do a comparison there, but being as though that's not considered appropriate I won't attempt to do that.

And any of the other matters I think can be more properly dealt with off the record, if the commission pleases.

COMMISSIONER IMLACH: Yes. Thanks, Mr Cooper. I think that's fair enough, Mr Rice, don't you?

MR RICE: Yes, commissioner.

COMMISSIONER IMLACH: Yes. All right, thank you, gentlemen. Well, I will have to reserve my decision and give these ticklish items a bit of thought. I'll issue a decision as soon as I can. Thank you.

HEARING CONCLUDED