

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 4421 of 1993

IN THE MATTER OF an application by
the Meat and Allied Trades
Federation of Australia to vary
the Meat Trades Award and
Abattoirs Award

re occupational superannuation,
wage rates and hours

COMMISSIONER GOZZI

HOBART, 29 June 1993
continued from 21/6/93

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Gentlemen, this is a continuation of a hearing following the proceedings a few days ago. Are there any changes in appearances this morning? If not, I suspect you have before you my reasons for interim decision dated the 28th of June, together with two specific correction orders. You recall that the application made by the Meat and Allied Trades Federation went to the fork-lift truck driver rate which I endorsed in line with Mr Flynn's submissions.

I dealt with the issue of the hours situation for clerks and left that to one side because I wasn't quite clear as to what actually happened when the application was made for the 19-day months and having a preliminary investigation of it, I couldn't be satisfied that in fact clerks should be excluded, so I set them to one side, subject to what else you might have to say about that.

I dealt with the issue of increasing the weekly superannuation contribution rate and picked up what was an agreed position between you at the end of the day, and that is to back date it to the 24th of May 1991, adjusted again from August 1991 and also in accordance with the submissions made by Mr Flynn and supported by Mr Swallow and Mr Edwards, looked at the casual rate adjustment and put in the correction order which had to be issued, the proviso - I think picked up by Mr Flynn - that the Guarantee Act adjustments need to be made.

Now, the other issue goes, of course, to the actual inclusion of a different superannuation fund than what's shown in the award for Devonport and Bridgewater and looking at that situation, I've tried to cover it as best I can in the decision. There are some, what I regard to be technical difficulties, having regard to my charter under the Industrial Relations Act and briefly that charter goes to the commission being satisfied that the fund is a complying fund in the context of the - what's it called again - the commission - the Superannuation Insurance Commission and I refer to, in the act, to the charter that I need to observe in establishing that it is a complying fund as far as the Insurance Superannuation Commission is concerned and I think the reasons for decision cover my concerns about that quite adequately.

So, we're up to date with the applications that have been submitted by Mr Flynn in respect of the fork-lift truck rate and the increase in weekly superannuation contributions. The matters that we have to deal with this morning go to clerks, hours of work, and the superannuation clause. That brings us up to speed. Who would like to go first?

MR FLYNN: Well commissioner, if you wish to deal with them in that order, that one being the clerks first, -

COMMISSIONER GOZZI: Right.

MR FLYNN: - I'd like to defer to Mr Edwards in that matter. He has carried out some research of late - quite late last night - and has found some information that may be of benefit to the commission in perhaps making a final decision on this matter. Thank you, sir.

COMMISSIONER GOZZI: Thank you, Mr Flynn. Mr Edwards?

MR EDWARDS: I'd like to commence, commissioner, by correcting Mr Flynn's statement. It wasn't late last night, it was early this morning.

COMMISSIONER GOZZI: Well, it would have been nice and fresh.

MR EDWARDS: Very early this morning. Commissioner, my research isn't all that dissimilar to that that the commission has obviously undertaken and to which you have referred in your interim decision - or reasons for interim decision. I have got Mr Murray of the TCCI doing a more extensive search through the transcript. I'm sure as you will readily understand that the 38-hour week transcript in respect of the Abattoirs and Meat Trades Awards goes for several hundreds of pages. Not only that, we've then got the somewhat unusual situation where the Abattoirs Award was then hived away from the Meat Trades Award and joined to the 4 per cent second tier matter somewhat latterly in proceedings which created an additional confusion - certainly so far as my filing system is concerned it did anyway, and as a result of all that, I won't be confident I've picked up every word in the transcript to date.

COMMISSIONER GOZZI: Well -

MR EDWARDS: But I did find a couple of references to the intent of the parties which I'd just like to make the commission aware of. The first is - well they arise in transcript of proceedings in matters T.619 which was the 38-hour week matter for abattoirs and T.1063 of 1987 which was the 4 per cent second tier matter. The subject of the discussion on this particular day was a further application that was made at that time, No.T.1263 being an application made by the Transport Workers' Union in respect of the 4 per cent second tier.

COMMISSIONER GOZZI: Was that '87 too? It doesn't matter. I can -

MR EDWARDS: I suspect it would have been '88, commissioner, but I can't be definitive because the transcript doesn't say.

COMMISSIONER GOZZI: It's sort of reminiscent of the current structural efficiency exercise. It spans quite a period of time.

MR EDWARDS: Yes, and probably as definitive, commissioner.

Commissioner, I take you to transcript of that particular matter at page 84.

COMMISSIONER GOZZI: Page 84 of T?

MR EDWARDS: Of those matters - T619 -

COMMISSIONER GOZZI: All - all of them?

MR EDWARDS: Well, it's one transcript, commissioner.

COMMISSIONER GOZZI: Right. So they're all joined?

MR EDWARDS: They were all together on that day.

COMMISSIONER GOZZI: So - right - what date -

MR EDWARDS: They're all a happy, cosy family, and the date was 26th April 1988.

COMMISSIONER GOZZI: Now you know, Mr Edwards, why I'm starting to list things separately.

MR EDWARDS: That's a practice that I always supported, commissioner, as I'm sure you will recall.

COMMISSIONER GOZZI: Right - 26th April '88 - page 84.

MR EDWARDS: 26th April 1988, commissioner at page 84. I was making a submission to you at the time, commissioner, in respect of an application by Mr Lynch to have the TWU application heard, and the argument put forward by Mr Lynch was that the matters should be adjourned to enable the TWU to examine the agreements reached between the parties to that point in time which had spanned some 2 years at that particular time.

COMMISSIONER GOZZI: I remember that.

MR EDWARDS: The submission I made is that that shouldn't take place and that would further delay matters that had already been ongoing for some considerable time as you yourself have already recorded this morning. And I indicated that - firstly, perhaps by way of history, commissioner, you will recall that once the 38-hour week and 4% second-tier matters for the Abattoirs Award were joined together and hived away from the meat trades matter, your instruction to the parties was that individual works should seek to negotiate their own outcomes on those two particular subject matters.

COMMISSIONER GOZZI: Yes.

MR EDWARDS: The first to come before the commission was in respect of Longford Abattoir -

COMMISSIONER GOZZI: Right.

MR EDWARDS: - the second to come before the commission was in respect of the Gilbertsons group of companies which were the ones partly owned by as I understand it at the time - Hawkridge, I'm sorry, not Gilbertsons.

COMMISSIONER GOZZI: Yes, I was just going to say.

MR EDWARDS: And the - the next one to come before the commission was in respect of Blue Ribbon which the commission determined should be used generally - if I can use that loose terminology - in respect of other works, and most particularly Cooee and Devonport abattoirs were - were debated at some stage during the transcript on that particular day. As to whether or not that was appropriate or otherwise.

At the time this application was made, the Hawkridge and Longford matters had been to the commission and been 'endorsed' by the commission and the Blue Ribbon one was to be presented that day. And I said, on page 84, if I can return now to the transcript: My understanding was that the 4% and 38-hour week flowing from those agreements applied to all employees at those works with the possible exception of clerical employees, and therefore I was of the understanding that transport worker classifications had been dealt with along with all others. That's the first observation in the transcript that I could find in respect of clerical employees at all, and that is that it was my understanding that they had not been incorporated in the agreements presented to the commission at that time.

On page 85 of the transcript at the second paragraph, I go on and make the following observation. Sorry, before I do, I'll go back to 84 and just complete so everything is in context, I think, commissioner. You asked the question: That's at Longford, to which I responded: Longford and the Hawkridge plants.

Those matters that were before you the last we were before the commission and they are Camdale, Devonport - Camdale, Devonport and Launceston plants as well as the Longford matter.

And I go on and say: I've also had a brief discussion with Mr Kearney this afternoon from the Blue Ribbon Group who indicates to me that the agreement that they have reached which will be tabled a little later this afternoon is in

respect of all their employees with the exception, I believe of clerical employees, and therefore that too would take into account transport worker classifications employed by the company within the terms of the Abattoirs Award.

So again it was the intention of the parties at that stage to exclude clerical employees from those claims.

There's no further reference to clerical matters until page 89 of that transcript, commissioner, and I'd like to - to quote Mr Swallow, about three quarters of the way down that page, where Mr Swallow says: My only problem is, like Mr Edwards, all those agreements to date have been in respect, as far as I've been aware, for all employees other than clerical, which is the applicant making it quite clear that the agreements reached to that point, which are the Hawkridge ones, the Longford one, and I guess also the Blue Ribbon one which was put up that same day, specifically were designed to exclude clerical employees.

That - those extracts from transcript, commissioner, in my submission are supported by the exhibit, E.11, which is the one you ultimately used, sir, as the vehicle to vary the award, if you recall, that's the Blue Ribbon offset -

COMMISSIONER GOZZI: Yes, I know.

MR EDWARDS: - possibly done by Mr Kearney.

COMMISSIONER GOZZI: Yes.

MR EDWARDS: Where you'll note, sir, that in the front page of that, there's a summary of the cost of the claim under various headings, and they're the various category of employee employed at - by Blue Ribbon. The headings were: slaughtermen, boners, maintenance, freezer, follow-on labour - boning room, follow-on labour - slaughter floor, wholesale, by-products. And I make the observation that it specifically excluded employees, and there were no cost offsets - if I can use the term that was in vogue in those days - negotiated in respect of clerical employees. Nor indeed was the annual wages bill of the company calculated including clerical employees wages - that too was excluded.

So it's very clearly the intent of all of the parties, that is, the applicant, Mr Swallow, and the respondents through TCI and MATFA on behalf of various companies to exclude clerical employees from T.619 which is the 38-hour week matter. And we believe that is what was put to the commission as agreements by various plants in accordance with the direction you instructed people to pursue at that time, commissioner. And that the variation that subsequently occurred to the award for which I will have to take some responsibility, was in error. And I say I have to take some responsibility, sir,

because you may further recall that you directed Mr Swallow, myself -

COMMISSIONER GOZZI: Yes.

MR EDWARDS: - and your then associate, Mr Andrews, to meet and draw up the orders.

COMMISSIONER GOZZI: Yes.

MR EDWARDS: Which we did, and Mr Swallow, at this time was absolved from responsibility because he didn't make them easy. So it was Mr Andrews and myself who drew the orders and I'm quite prepared to stand here now, shamefaced and hang my head and say I did it wrong.

COMMISSIONER GOZZI: The draft orders that Mr Andrews prepared are still on record and they show the variation to apply to all of the award.

MR EDWARDS: Yes indeed, exactly. And I admit it's in error and I was one of the draft people - or draftspersons - that drafted that draft order. And obviously from the transcript, quite erroneously.

COMMISSIONER GOZZI: Well, Mr Edwards, I'd have to say that I've got very much the same recollection that you have. The only missing link, as far as I'm concerned, is the FCU itself.

MR EDWARDS: Well -

COMMISSIONER GOZZI: Now I'm fairly certain that I recall the FCU being represented at hearings at some stage, but not absolutely sure - without going back into the records to a much greater extent than what I have done - whether it was in respect to this particular proceeding or not. I'm almost definite that it was in respect to these variations and I'm almost definite that there were discussions between the FCU and the AMIEU and other parties about hours and I'm not totally sure of what the outcome of those discussions were, but certainly Mr Grubb, as it was at the time, was involved, and I'm not sure whether the transcript will show what happened there.

MR EDWARDS: Commissioner, my recollection on that is a little different to yours. Given the research that I've done on the transcript, and I really have started at page 1 and waded through to page 400 and 'X' whatever it was.

COMMISSIONER GOZZI: Right.

MR EDWARDS: I didn't have these bags under my eyes yesterday morning - and I can find no comment at all in the transcript where an appearance was made by the Federated Clerks Union. I further have looked at the decisions arising

from the various proceedings before yourself, and you will recall there were several. There was the one relating to supermarkets; there was the one relating to smallgoods; there were the ones relating to retail butcher shops which were ongoing matters; and there was the general ones made in respect of abattoirs where you gave the directions to the parties, and in none of those decisions can I find any recollection made by the commission that the FCU were in attendance at any of the proceedings. They certainly don't have their name recorded in any of the decisions as being in attendance, and the transcript doesn't record them being there either.

The only other organisation that I am aware that showed any interest at all in those proceedings were the FEDFA and they did that by way of a separate application, as did the TWU, and that was an application by Mr Challis, then the state secretary of the FEDFA; T.1565 of 1988, and I wrote back to Mr Challis on the 7th of September 1988 telling him that she was all over red rover. Everything had been done which he hadn't quite caught up with.

But outside of that, there is no - I have no knowledge at all of the clerks being involved in those proceedings. They were involved in the structural efficiency matters which followed not all that long afterwards, given the time the 38-hour week and the 4 per cent matters took to complete, and it wasn't that long after that the structural efficiency exercise commenced and there is no doubt that Mr Grubb did involve himself in those. I think like being Dracula loose in the Blood Bank sort of comes to mind as an example of my recollections of the sort of comments that were made at the time.

COMMISSIONER GOZZI: What's happening in the field? What hours are clerks working?

MR EDWARDS: The clerks are working 40 hours which is what gave rise to this application in the first instance, but the question was raised with one of our members who said, 'Oh, no, you're on 40 hours a week', and upon looking at the award proper in the hours clause, it clearly shows 38. You then go to the wage rates clause and it indicates that it is 40, and that's what gave rise to the application. Now it's no - there's no doubt at all in our mind that the intention was that clerks remained on 40 hours per week.

COMMISSIONER GOZZI: The application itself was for the entire award. It was never amended to reflect anything different.

MR EDWARDS: Not in specific terms it wasn't, no. I have to concede that that is true, that there was no - seemingly that - as far as I can find anyway - no application made or leave

sought to amend the application. It's certainly obvious that the intent of the application was clarified by way of submission, which I've taken the commission to, but I can't find where the application was varied in any way by the AMIEU although their intent was not to proceed with clerks, as indeed our consent, which was necessary in those days - I think when we first started out it was prearbitration on some of those issues - our consent was hinged on clerks being excluded.

COMMISSIONER GOZZI: Yes.

MR EDWARDS: For example, the 4 per cent would have had to have been paid as two and two had it not been for our consent.

COMMISSIONER GOZZI: So what are we saying, really that in respect of the award all provisions, with the exception of Division K, finished up with a 38-hour week?

MR EDWARDS: That is correct.

COMMISSIONER GOZZI: So, carters and drivers, maintenance employees, apprentices, junior workers, canteen employees, all those divisions there finished up with a 38-hour week and clerks, for some reason, was specifically left to one side.

MR EDWARDS: And I think Mr Swallow, on any number of occasions, made it pretty clear that the reason he did that is that he doesn't have clerks as members.

COMMISSIONER GOZZI: Well I think that -

MR SWALLOW: I've never said that.

COMMISSIONER GOZZI: No. Right.

MR EDWARDS: I'm sure I recall that, but anyway I may be wrong.

COMMISSIONER GOZZI: I think the argument about membership probably was a bit different to that.

MR EDWARDS: But it was never run.

MR SWALLOW: It was between me and Mr Grubb who had the most.

COMMISSIONER GOZZI: That's exactly right, yes.

MR EDWARDS: I don't think we'll go back into that.

COMMISSIONER GOZZI: Well -

MR EDWARDS: But that was the intention of the applicant and certainly the intent of the respondents at the time, commissioner.

COMMISSIONER GOZZI: All right. Thanks, Mr Edwards. And of course the same applies with all of the divisions in the Meat Trades Award.

MR FLYNN: Not the same - in the case of retail butchers - retail butchers and the clerks -

COMMISSIONER GOZZI: What happens in the Meat Trades Award?

MR EDWARDS: Commissioner, in that particular award you'll find, I think, that retail butchers and clerical employees are excluded from the 38-hour week provision.

COMMISSIONER GOZZI: Well retail butchers certainly are.

MR EDWARDS: And you'll find also, sir, that clerical employees are as well the other drafting exercise that Mr Andrews and I conducted and we got one right and one wrong.

MR FLYNN: Section 1 refers to

MR EDWARDS: Section 1 of the award, commissioner, supplies the conditions for clerks and employees employed in retail shops -

COMMISSIONER GOZZI: So we go to clause 27 - page 34 do we?

MR EDWARDS: Yes, sir. It says: The hours of work in respect of which wages fixed by this award shall be paid shall be 40 to be worked - and I won't take the commission further into that clause because I don't think it would benefit anyone. In fact it could be contrasted with the supermarket hours clause which is clause 59 which clearly establishes the 38-hour working week.

COMMISSIONER GOZZI: Alright, thanks, Mr Edwards. Mr Flynn or Mr Swallow? Mr Swallow?

MR SWALLOW: My recollection is much the same as Mr Edwards'. I just accepted the clerks position as a bonus at the time and I -

COMMISSIONER GOZZI: That's nice of you, Mr Swallow.

MR SWALLOW: - and given the - given the - that the clerks were attempting to - to sort out a clerical award, I believe that that had come into ours and of course that would bring them the 38-hour week, but I don't know how far that is down the track - whether it's happened or going to happen or what, but the simple explanation to it is of course that the clerks

got a bonus at that point in time that was - that it wasn't intended.

COMMISSIONER GOZZI: But not in the Meat Trades Award?

MR SWALLOW: No, no. I think how it come about was, you recall, we had the FED&FA here, we had the TWU here, we had every Tom, Dick and Harry here - once - two or three meetings and they all finished up at the end of the - as it got towards the end of the section they - they never came, they let -

COMMISSIONER GOZZI: Yes.

MR SWALLOW: - let the Meat Workers Union handle it all.

COMMISSIONER GOZZI: Yes, that's right. Alright, thanks, Mr Swallow.

Well I'll reserve my decision on it and we'll deal with the other matter that's outstanding with respect to that particular application that's before me - 44 - 4421 of 1993 - and the issue goes to superannuation. Again, I think I covered that topic, as I said earlier, fairly extensively in the - in my interim decision.

Perhaps we'll just go off the record for a moment.

OFF THE RECORD

COMMISSIONER GOZZI: You would like to make some submissions?

MR FLYNN: Commissioner, yes, if I can, I wish to apologise to the commission and I seek leave to amend that part of my application that refers to the Legal & General direct super fund.

COMMISSIONER GOZZI: Alright, we'll go to the application then and it's application 4421 of 1993 - how do you wish to amend that?

MR FLYNN: We wish to remove the words 'Legal & General Direct Superannuation' - I'm sorry, commissioner, I can't find my copy of that - I think that's what they actually state at the present time.

COMMISSIONER GOZZI: It's states, Legal & General Direct Super at the moment.

MR FLYNN: Right, I would like to replace those words with Legal & General Superannuation Fund.

COMMISSIONER GOZZI: Just a moment. So we'll cross out 'direct super' and we'll call it Legal & General Superannuation Fund.

MR FLYNN: Correct.

COMMISSIONER GOZZI: And that's the amendment 29/6/93. Are there any objection - objections to that amendment? Right, thank you. Well the amendment - leave to amend is granted, Mr Flynn.

MR FLYNN: Thank you, commissioner. I would also, sir, before I hand in a further exhibit, wish to apologise to the commission for exhibit MATFA.5, which in fact refers to Legal & General Employed Persons Superannuation Fund. That document is irrelevant to these proceedings.

COMMISSIONER GOZZI: Right, just let me have a look. So the reference to Legal & Employed Persons Superannuation Fund is not relevant?

MR FLYNN: Correct, sir.

Commissioner, I've just handed up a further exhibit.

COMMISSIONER GOZZI: Well that will be MATFA.8.

MR FLYNN: Thank you, commissioner. And from this exhibit you will see, on the first page at the top, it refers to that term 'Direct Super' that we have all been grappling with. This I'm told, sir, is merely a marketing name that is given to the fund which, under the Legal and General Superannuation Fund, complies with the requirements of the ISC. That will be further demonstrated in this exhibit, sir. I take your attention to - under - to the trustee, No.1 on that application form which would be similar to the applications that you would have already received in an earlier exhibit.

COMMISSIONER GOZZI: Better be identical.

MR FLYNN: Exactly. And you'll note No.1 states: I hereby apply for admission to the Legal and General Superannuation Fund - the fund.

COMMISSIONER GOZZI: Right.

MR FLYNN: If we then - for further evidence, commissioner, in support of this, next we have an application to become a participating employer which again is headed up 'Direct Super'. I'm not sure of the total relevance of this to Bridgewater and Devonport in this case because I have not seen a form signed by either of the employers, however I will refer you to the employer declaration at the bottom which again states: I/We hereby apply to become a participating

employer, as defined in the trust deed and rules, by which the Legal and General Superannuation Fund is constituted and of which Direct Super is a recognised sub plan. Again, commissioner, just more reinforcement of the fact that Direct Super is a derivative of Legal and General Superannuation Fund.

COMMISSIONER GOZZI: Have you got that - is that an exhibit?

MR FLYNN: It's part of the exhibits you have before you, commissioner. It's the second page of that exhibit. I've handed them up together.

COMMISSIONER GOZZI: Oh, I'm sorry. We'll mark that MATFA.9. Now the obvious question, Mr Flynn, where is the application by Devonport and Bridgewater to be a participating employer?

MR TAYLOR: I thought it came up last time.

MR FLYNN: Were they under those original forms?

MR TAYLOR: I thought it was in those original forms, yes.

MR FLYNN: The original exhibit that went forward to you, commissioner, you'll understand there was only one copy of that. It as a confidential document and that is now the commission's -

COMMISSIONER GOZZI: Which is that?

MR FLYNN: Amongst those applications from the employees -

COMMISSIONER GOZZI: Yes.

MR FLYNN: - I understand that there are applications there from the employers as well to become a participating employer.

COMMISSIONER GOZZI: Oh, are they? I didn't pick that up.

MR FLYNN: Well, we sincerely hope so, commissioner.

COMMISSIONER GOZZI: You mean, this sort of application -

MR FLYNN: Yes, sir.

COMMISSIONER GOZZI: - MATFA.9? It's part of the application that you handed up, Mr Flynn? I -

MR TAYLOR: I think they went up in that -

COMMISSIONER GOZZI: The odds are lengthening, Mr Flynn.

MR FLYNN: My palms are getting stickier, Mr Commissioner. Commissioner, it may be - as you've spent some time going

through that exhibit, that they're not there. Unfortunately, as I said earlier, I haven't had the benefit of examining that exhibit and that was, as you recall, handed up by Mr Taylor from the box.

COMMISSIONER GOZZI: It's got - the application forms themselves, to the trustees of Legal and General Superannuation Fund, have got on the bottom the employer acceptance, but that's a bit different to what you are talking about.

MR FLYNN: It would appear, commissioner, that you don't actually have a copy of that form and I think Mr Taylor can organise that without a lot of trouble. Again, our humble apologies.

The application itself, commissioner, that is MATFA.8, and those that you have before you, actually include that employer acceptance at the bottom which refers to 'the fund' which is that noted above, Legal and General Superannuation Fund. This other form that I referred to is periphery.

COMMISSIONER GOZZI: Why does the employer have to become a member -

MR FLYNN: I'm a bit puzzled by that myself.

COMMISSIONER GOZZI: - become a participating employer?

MR FLYNN: I'm a bit puzzled by that myself. Is it -

MR TAYLOR: It binds into the obligations of the

MR FLYNN: Mr Commissioner, would it help us if we put Mr Taylor in the witness box perhaps.

COMMISSIONER GOZZI: I'd prefer to go off the record again just for a moment.

OFF THE RECORD

COMMISSIONER GOZZI: Mr Taylor, can you just take the witness box please.

RUSSELL TAYLOR, recalled:

COMMISSIONER GOZZI: You're still under oath, Mr Taylor. Mr Taylor, can you give evidence to the extent that the exhibit MATFA.9, which is the application to become a participating employer, has been completed by the employers concerned in this matter?... Yes, commissioner.

Have they been accepted?... To by Legal and General?

Yes?... Not at this stage because we haven't submitted them pending the outcome of this hearing.

All right. What's the relevance of this document to employer contributions to a superannuation fund?... The relevance is that part of the trust deed states that the employer is one participating party of the fund and they are agreeing to be bound by the trust deed and rules governing the fund. That's their declaration that they're going to do so.

Does that give employers any rights, obligations or liabilities towards the superannuation fund, the Legal and General Superannuation Fund?... It gives them the rights under the trust deed, yes.

What rights are they?... Well I'd have to find them.

The reason I'm asking you the question is that it's my understanding that occupational superannuation is an arrangement whereby the only right that the employer has is, in fact, to make the contribution on behalf of the employee. There are then no subsequent rights against the fund. And I just wonder what the arrangements are in respect of this particular circumstance?

MR FLYNN: Russell, if you turn to page 11?... Yes, I've got it now. Yes, page 11 of the trust deed, section 5 - Participating Employees. It goes on in some detail about the rights of the employers -

COMMISSIONER GOZZI: Does any of that go to accumulated benefits?... Does it talk about accumulated benefits?

Yes. What rights have employers got, participating employers to the accumulated benefits of contributions. That's really what I'm asking?... They don't have any rights.

No?... They don't have any rights. The rights belong to the employees.

So why do they have to be a participating employer? I'm sorry, Mr Taylor?... As part of the - well, not being a legal expert but as part of the trust deed - there has to be a trust deed set up which sets out who's involved in the superannuation contract, which is the employer and the employee and the trustees. Because the employer has to be

bound by the rules as well. He has obligations that he has to

-
So would employers be participating employers in respect of funds currently nominated in awards? Are you aware of that?... Could you repeat that again?

Are employers making contributions on behalf of employees, in respect to funds which are currently in awards, participating employers of those funds?... I'm not sure I know what you mean. But with -

Well I'll give you an example. Is Devonport at the present time a participating employer of Tasplan?... I would assume so. I have not seen Tasplan's trust deed.

So the arrangements in respect of this fund are the same as per existing funds in the award?... Yes.

Thank you. All right, you can step down, thank you.

Mr Flynn?

MR FLYNN: Okay, commissioner, if we continue on through those papers I've handed up you'll come to the next one detailed or headed up 'Direct Super'.

COMMISSIONER GOZZI: MATFA.10.

MR FLYNN: And this is a two page exhibit, commissioner.

COMMISSIONER GOZZI: Yes.

MR FLYNN: And that merely attests to the type of fund, its administrative requirements, its investments et cetera. Then the final page before you, commissioner, which I imagine will become MATFA.11 -

COMMISSIONER GOZZI: Yes, so marked.

MR FLYNN: - is the - what do they refer to it as - it's a letter from G.A. Collie, the Director of the Insurance Superannuation Commission, stating that the fund appears to have some sort of registration acceptance as an occupational superannuation fund under the conditions required by the ISC.

COMMISSIONER GOZZI: Which establishes the Legal and General Superannuation Fund.

MR FLYNN: Correct, sir.

COMMISSIONER GOZZI: Now is there any documentary proof in the trust deed for Legal and General Superannuation Fund recognising Direct Super as a recognised subplan?

MR TAYLOR: If you go to page 16 of the trust deed.

COMMISSIONER GOZZI: Have I got the trust deed?

MR FLYNN: No.

COMMISSIONER GOZZI: It would be handy. That's exhibit MATFA.12. Now where does it say that?

MR TAYLOR: It doesn't specifically say 'Direct Super'; it just says 'any category'.

COMMISSIONER GOZZI: Whereabouts?

MR FLYNN: Paragraph 8.1 at the bottom of page 16, commissioner.

COMMISSIONER GOZZI: Is 'category' defined?

MR TAYLOR: I don't know.

COMMISSIONER GOZZI: Has 'category' got a meaning?

MR FLYNN: 'Category', yes sir, on page 1.

COMMISSIONER GOZZI: Page 1. 1.

MR FLYNN: Yes. Headed up, 'Rules':

'Category' means in respect of that category of membership to which the member is admitted or transferred.

COMMISSIONER GOZZI: Well, what's all that mean?

MR TAYLOR: What it means is that you can have any category, call it what you like, underneath that trust deed. It doesn't mention direct super because that trust deed was done before direct super came into existence. The same with Super Easy, Safe, and all the other sub-funds that are underneath there. They don't have to specifically mention them, my belief is, because it is any category within the fund.

MR FLYNN: So I think in simple terms, commissioner, to answer your question, no, the trust deed does not refer directly to a direct super.

However, as I pointed out in Exhibits 8 and 9, the reference back to Legal & General Superannuation Fund is there on paper headed 'Direct Super'.

I've got to be honest, commissioner, I don't understand the use of these terminologies 'Super Easy', 'Direct Super'.

However, they are obviously something that is common to the superannuation industry for whatever marketing and sales reasons, and they are used accordingly.

Having discussed the matter by telephone, which is not much good to you I realise, commissioner, with the ISC, they recognised that these what were called 'derivatives' do exist of an approved superannuation fund.

COMMISSIONER GOZZI: Alright. Thank you, Mr Flynn. Mr Swallow, anything further to add?

MR SWALLOW: No, thank you.

COMMISSIONER GOZZI: Alright, well look, in all of the circumstances I think the commission has gone to some length to satisfy itself that the fund is a complying fund.

I think one of the matters that has been highlighted goes to the need to establish very precisely that any fund that is sought to be included in the award is indeed a complying fund.

Now, in my opinion, it doesn't say much for the workings of the Insurance and Superannuation Commission if it can't deal with those type of issues in a way to satisfy tribunals such as these, that these so-called sub-funds are indeed sub-funds of complying funds. I think that should be made quite specific.

If one wanted to, and I don't want to, I think it would be pedantic in the extreme, but if one wanted to you could go to MATFA.9 and say notwithstanding that that document specified that direct super is a complying fund, that is in fact a Legal & General document; and it is a bit like appealing to Caesar in respect of that particular situation. And I think you take my point.

So, for what it is worth, Mr Taylor, seeing you are here representing Legal & General, I think what ever avenues you can use to look at those particular types of problems would be appreciated.

The charter of the commission is to ensure that the fund is a complying fund. I'm as satisfied as I can be in the circumstances that direct super is an authorised sub-plan of a complying fund and, therefore I don't intend to not include them in the award.

But I think for future reference and other areas that might come up, those types of mechanics and technical matters need to be addressed very precisely. Because that, after all, is what the charter of the commission is, and that's why that section of the act is there, to make sure that the money that

is put into funds on behalf of employees finishes up with the employee at the end of the time.

So I appreciate the information that's been provided to the commission. As I say, I will make the variations to the award in the manner requested, and that will be done as soon as possible, and I will further look at the issue of clerks with respect to the hours of work situation.

So these proceedings are concluded.

HEARING CONCLUDED