

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, 21 June 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances please?

MR M. FLYNN: FLYNN, MICHAEL DENNIS, for the Meat and Allied Trades Federation of Australia, Tasmanian Division.

COMMISSIONER GOZZI: Thank you, Mr Flynn.

MR J. SWALLOW: SWALLOW, J.E., AMIEU.

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

MR FLYNN: Thank you, Mr Commissioner. Mr Commissioner, if I could perhaps request that we deal with these matters in a particular order. I've discussed these with the union secretary who is quite happy to go in this particular order. The first item would be the fork-lift truck driver, as mentioned, and it appears to be a clerical error in the award; second is the matter of the clerks, 40 hours in the Abattoirs Award; next being the matter of contributions for occupational superannuation; and the final matter being the Legal and General Superannuation Fund being admitted to the award.

COMMISSIONER GOZZI: Yes. Thank you. That's fine, Mr Flynn.

MR FLYNN: Thank you, Mr Commissioner. Perhaps we could start with the matter of the fork-lift truck driver which is in the Meat Trades Award, Division E, Carters and Drivers, subclause (4), fork-lift truck driver, subclause (a) -

COMMISSIONER GOZZI: What page is that on, Mr Flynn?

MR FLYNN: It's on page 16, Mr Commissioner.

COMMISSIONER GOZZI: 16, right.

MR FLYNN: And you'll note, if you go to subclause (a), commissioner, it mentions up to a lift capacity of 5,000 kilograms, the rate being \$355.70, and (b) lifting capacity in excess of 5,000 kilograms which I would imagine would be a little bit more difficult perhaps, \$341.00. Our own researchers found, commissioner, that that should in fact be \$335.70 and I guess we could put that down to a clerical error or a printing error at the Government Printer.

COMMISSIONER GOZZI: So, (a) should be?

MR FLYNN: \$335.70.

COMMISSIONER GOZZI: Right. What's actually been paid out there in the industry?

MR FLYNN: I don't know the answer to that, commissioner. We found a clerical error. i would imagine \$335.70. Anybody notice something like that in the award I would imagine that

they'd at least be querying it.

COMMISSIONER GOZZI: Right. Okay. So that should be \$335 instead of \$355. How long has it been in there?

MR FLYNN: I can't tell you that, commissioner. We went back through a couple of copies of the award and it seems to have been there for some time, although I've really only got the most recent edition from the Government Printer which is No.4 of 1992 Consolidated and it certainly is in there.

COMMISSIONER GOZZI: Right. The \$335 doesn't feature in the award anywhere else and just looking at it now, it seems to equate to the 1.2 tonne or less motor vehicle capacity.

MR FLYNN: Well -

COMMISSIONER GOZZI: Right on top there, Division E, item 1.

MR FLYNN: Yes, I notice where you're talking, Mr Commissioner. That's \$355.20 in fact.

COMMISSIONER GOZZI: Yes.

MR FLYNN: It just seems to me to be a transposition of a figure from a '3' to a '5'.

COMMISSIONER GOZZI: Right. Where was - where do we find the original figure?

MR FLYNN: The \$335.70?

COMMISSIONER GOZZI: Yes.

MR FLYNN: It goes back into time, commissioner. I don't know whether Mr Edwards has got an older copy there. Unfortunately we've only got the current copy.

COMMISSIONER GOZZI: See you can't go back too far in time because the latest wage increase was October - November -

MR FLYNN: I'm not suggesting, commissioner, that it occurred at -

COMMISSIONER GOZZI: - 1991.

MR FLYNN: I'm not suggesting it occurred at that time. I believe it's happened in the meantime.

COMMISSIONER GOZZI: Right. Well what - do you know what was shown - I might have it here - when the award was - what was the figure pre the October 1991 state wage case because that figure would have been adjusted by 2.5 per cent.

MR FLYNN: As Mr Edwards has just pointed out, commissioner, if we go to the Abattoirs Award you will find that a fork-lift truck driver lifting a capacity up to 5,000 kilograms is \$335.70.

COMMISSIONER GOZZI: Right.

MR FLYNN: With the over 5,000 kilograms being \$341, so those two figures are both identical.

COMMISSIONER GOZZI: Right. What was it beforehand. When was that figure - the point I'm getting at is the fork-lift truck rate and all the other rates would have been adjusted by 2.5 per cent -

MR FLYNN: 19 -

COMMISSIONER GOZZI: 91 -

MR FLYNN: August 1991.

COMMISSIONER GOZZI: Yes, 91, and I want to know what the - can anybody say what the figure was prior to the latest one to see whether we had it right at that point in time, prior to October 1991.

MR FLYNN: I'm afraid I don't have it here, commissioner, no.

MR SWALLOW: Not here.

COMMISSIONER GOZZI: All right. Well, look, I accept what you're saying that for all intents and purposes it appears to be a clerical error. The commission will check out the figure pre November 1991, adjust that figure by 2.5 per cent for the state wage case and if that produced \$335.70, well then we know it's the correct figure.

MR FLYNN: Thank you, commissioner. the commission to the second matter which is the matter of the clerks.

MR SWALLOW: Are we going to - could I respond to that?

COMMISSIONER GOZZI: Well it might - if you'd like to. Mr Flynn, does that - ?

MR FLYNN: Certainly.

COMMISSIONER GOZZI: Yes, Mr Swallow, we keep it in sync.

MR SWALLOW: I've just got a feeling that those rates were adjusted to pick up what the state standard was at a particular point in time. Now I'm just wondering whether if there was a mistake made then or that really is the actual figure, and I just - in other words, what I'm saying is the

state - that rate, the state standard, ought to apply.

COMMISSIONER GOZZI: Well - yes, I'm not sure, Mr Swallow, what the background of it is. Just take the point that Mr Flynn made that in the Abattoirs Award it's \$355.70. Now the figures should be the same.

MR SWALLOW: I agree with that.

COMMISSIONER GOZZI: Yes.

MR SWALLOW: But it ought to be also what reflects the state standard. That's what I'm saying.

COMMISSIONER GOZZI: I don't know that the state standard is. But certainly, in looking at it, I'll undertake to have a look at the rates and if there's any difficulty I'll get back to the parties on it.

MR SWALLOW: Yes. That's what I was going to do. I was going to check it up with the Transport Workers' Union to find out exactly what it is.

COMMISSIONER GOZZI: Well certainly do that, and if there's any problems just let me know.

MR SWALLOW: Good. Thank you.

COMMISSIONER GOZZI: Mr Flynn, clerks.

MR FLYNN: Thank you, commissioner. The matter of clerks, commissioner, we've detected in an examination of our own copy of the award and then compared those with the Government Printer print copy and we find that in one section of the Abattoirs Award under Division K - Clerks and/or Cashiers - and that's on page 20 of your copy, commissioner.

COMMISSIONER GOZZI: Page 20, right.

MR FLYNN: You will find at the top of the column the dollar figure there, commissioner, is an amount per week of 40 hours.

COMMISSIONER GOZZI: Right.

MR FLYNN: You then go to clause 24, which is on page 34, commissioner. It goes over to 35 and 36.

COMMISSIONER GOZZI: Right.

MR FLYNN: Nowhere in there, commissioner, does it refer at all to a 40 hour week in the clerical area. It merely assumes a 38 hour week across the board. Now I actually spoke to Mr Hunter last week, commissioner. We tried to research the actual - the hearings and the transcripts, together with the

decisions of those hearings way back when the 38 hour week was originally being debated and, as you'll recall, it was debated over a number of years. I can only recall myself that the matter of clerks, as in the Meat Trades Award, was left at 40 hours.

Now it seems as if from the decisions that Mr Hunter was able to find for us, that it's not specific in any area. And, as I say, all I can do is rely on my own memory of the matter and at the time I can recall discussion with the Clerks Union present in the commission and Mr Swallow's claim at that stage certainly did not go to the matter of including clerks in a 38 hour week.

Now in this current award, this current edition of the award, and this goes back quite a number of years, commissioner, the amount per week of 40 hours is present in clause 8, division (k) all the way through, as is clause 24 which alludes to a 38 hour week in all areas of the award. It seems, again, commissioner, to have been an omission, clerical error, whatever we like to call it. There should have been a clause in this award, the Abattoirs Award, that should have been similar to that in the Meat Trades perhaps that allowed for a 40 hour week in the clerical area.

COMMISSIONER GOZZI: So Meat Trades is 40 hours for clerks, is it?

MR FLYNN: Correct.

COMMISSIONER GOZZI: Well I must say that I thought the only area of the award where we had a 40 hour week was in respect of retail butcher shops, but I can't recollect off the top of my head either, the clerks ever making an application. I know that there was some applications by the clerks which were put to one side pending negotiations between the TCI and the Clerks Union with respect to structure, but I'm not sure what happened with those applications.

MR FLYNN: Commissioner, perhaps if we have a look at the Meat Trades Award, No. 4 of '92 and on page 2 the actual arrangement of the award. Section (i) -

COMMISSIONER GOZZI: Which award?

MR FLYNN: The Meat Trades Award.

COMMISSIONER GOZZI: Right.

MR FLYNN: No. 4 of '92, the latest consolidation.

COMMISSIONER GOZZI: Right.

MR FLYNN: Section (i) - conditions for clerks and employees in retail shops. So it always has been the retail shops but also clerks have always been included in there too. And that, in my opinion and at the time of the discussions, and Mr Edwards' memory may be better than mine, was certainly the opinion and I can vaguely recall the hearing, commissioner, when Mr Swallow actually stated at the time that if the clerks want something, the clerks can get it, but there's never been an application made by the FCU.

COMMISSIONER GOZZI: Well if there's no application then it shouldn't be 38 hours, Mr Flynn.

MR FLYNN: Thank you, Mr Commissioner.

COMMISSIONER GOZZI: It's really as simple as that. I'm sure the clerks will be thrilled to hear about that.

MR FLYNN: They were summoned today, Commissioner.

COMMISSIONER GOZZI: Mr Edwards, it's good to see you back on your feet.

MR T.J. EDWARDS: Thank you, commissioner. Perhaps I could enter an appearance. If it pleases the commission, my name is EDWARDS T.J. I appear for the Tasmanian Chamber of Commerce and Industry.

Commissioner, my understanding in recollection in this matter is essentially the same as that that Mr Flynn has advanced, and that is that the original claims that were dealt with by the commission were those by Mr Swallow which sought a 38 hour week, and I have the same recollection of Mr Swallow specifically excluding clerks and, of course, the question of retail butcher shops was dealt with subsequently by decisions of yourself. But the original position that Mr Swallow adopted was that clerks were not included in his application. Unfortunately, I haven't had the opportunity to research this particular matter prior to coming here otherwise I may have searched the transcripts to see if I could find reference to that. But that's my recollection; I won't put it any higher than that. But my view was that the AMIEU never sought to vary the award for clerks in either of the two awards. If it pleases the commission.

COMMISSIONER GOZZI: Yes, thank you, Mr Edwards. Mr Swallow?

MR SWALLOW: What Mr Edwards and Mr Flynn says is my recollection also. The only thing that could change it is whether or not that case of clerks has been dealt with in relation to the 38 hour week. That could be the only way that a 38 hour week could be in either of the awards for clerks. If it hasn't, well it shouldn't be there, obviously.

COMMISSIONER GOZZI: Yes, thank you, Mr Swallow. Mr Edwards, the application by the clerks to vary the award in respect to the proposed structure, based on the Administrative and Clerical (Private Industry) Award, has that been processed in respect of the meat area?

MR EDWARDS: There have been some discussions, commissioner, between myself, Mr Grubb and, indeed, Mr Flynn from the Meat and Allied Trades Federation. They haven't progressed very far. The reason, I think, would be reasonably self-evident, and that is that we have elected not to proceed with a structure - or this is the position the employer organisations have put to the FCU - not to proceed with the structure for clerks until we are proceeding down the path of a structure for the meat industry generally. It would seem to us to be inappropriate to deal with one section of the award in isolation and we would prefer to deal with the totality of the award with Mr Swallow in attendance. And that's really where it's at; it's been left in abeyance until the full structural efficiency issue of classification structures et cetera is dealt with in the context of both awards.

COMMISSIONER GOZZI: What are clerks working at the moment?

MR EDWARDS: Forty hours a week, sir, it would be my understanding. I think Mr Swallow would generally support that.

COMMISSIONER GOZZI: All right, so the correction needs to be made to clause 24 on page 34 of the Abattoirs Award.

MR EDWARDS: It would seem so, commissioner.

COMMISSIONER GOZZI: All right.

Has the issue - just before we get off that particular matter - of which union the clerks belong to been sorted out between the AMIEU and the FCU?

MR SWALLOW: They don't belong to anyone.

COMMISSIONER GOZZI: Don't they?

MR EDWARDS: They can join us.

COMMISSIONER GOZZI: That's interesting. I won't ask you any more questions.

MR SWALLOW: I've got more, yes, of course I have, I have got more members than the FCU. The FCU has got none.

COMMISSIONER GOZZI: Well that's really what I was asking.

MR SWALLOW: Oh, I'm sorry - sorry - yes.

COMMISSIONER GOZZI: Alright, well Mr Flynn?

MR FLYNN: And, commissioner, just on that last point I guess it would be evidenced by the Clerks Union not being present today that they - they don't have any members in this area and therefore no interest in either of these awards.

COMMISSIONER GOZZI: Well, let me just see whether they were served the notice. They were notified of the hearing. Alright - superannuation contributions is it?

MR FLYNN: Yes, commissioner, this matter was again found in our review of the awards at the request of one of our members and we've - it's detected that we are currently under contributing for the purpose of the Superannuation Guarantee Administration Act 1992.

COMMISSIONER GOZZI: Which award?

MR FLYNN: Both awards, commissioner. As you'd be aware, we have a fixed amount in our award which is allowable under the Superannuation Guarantee Act. It's based on the tradesman butchers wage and, commissioner, we set that amount - and I think it was pre May 1991 - I would have the date if I could find it, commissioner, but in May of 1991 there was a state wage case, I believe, and - that's right, 24th May, \$15 state wage case - at that time and in line with your decision, a copy of which I have here, commissioner, if you would like to me submit those into evidence, the superannuation amount should have moved from \$11.10 to \$11.50.

Then again on 30th August 1991, the 2.1/2% rate was inserted and the \$11.50 amount should have in fact moved to \$11.80. Now both times these were omitted for some reason -

COMMISSIONER GOZZI: That's strange.

MR FLYNN: - and I've put those down to - to a clerical error. Again, in a separate section of the award from the clause 8, commissioner, I don't know if I'm trying to make excuses here, I really don't think there is an excuse, it's just something that's happened.

COMMISSIONER GOZZI: Yes.

MR FLYNN: And we have been under contributing in the spirit intent of that - of your decision No.T2304 of 1990.

COMMISSIONER GOZZI: What - what number is it?

MR FLYNN: T2304 of 1990.

COMMISSIONER GOZZI: Right.

MR FLYNN: If it helps the commission I have copies available.

COMMISSIONER GOZZI: No, that's fine.

MR FLYNN: Right. And on the last page of that decision - and I'll read it to you, sir, it says: However, the maximum amount of contribution an employer will be required to make shall not exceed \$11.10 which is the weekly amount for a full-time permanent employee. And then it states: Naturally that amount will vary consequential to future wage case decisions.

COMMISSIONER GOZZI: Yes, well look, I'll take a copy of that if you've got one there. Exhibit MATFA.1. Thank you.

MR FLYNN: Now, commissioner, we find ourselves in a position at the moment - this is the employers I'm talking about -

COMMISSIONER GOZZI: What's the clause in the award, Mr Flynn?

MR FLYNN: In the Abattoirs Award it's clause No.50, commissioner, and in the Meat Trades - clause No.48.

COMMISSIONER GOZZI: Right. Right, yes they certainly should have moved.

MR FLYNN: Yes, commissioner, and particularly with the advent of the Superannuation Guarantee Act 1992.

COMMISSIONER GOZZI: Yes.

MR FLYNN: Which requires employers - depending upon the size of the payroll in the 1991/92 financial year, in the case of smaller employers to stay on the 3%, which at a minimum would have been \$11.80 as from that date, and in the case of larger employers 4% and from 1st January this year - 5%, and so on up.

COMMISSIONER GOZZI: Mm. What are the dates again?

MR FLYNN: From 1st July 1992 - small employers 3% - and that still carries through to today.

COMMISSIONER GOZZI: Mm.

MR FLYNN: And in the case of a large employer with a payroll in excess of \$1 million for the 1991/92 financial year - 4%, for the period 1st July to 31st December '92, and 5% from 1st January 1993.

COMMISSIONER GOZZI: Yes, right.

MR FLYNN: Okay, commissioner, I've actually taken some extracts from the Superannuation Guarantee Act just to - to provide you with further information on dates and movements as required by the Superannuation Guarantee Administration Act.

COMMISSIONER GOZZI: MATFA.2.

MR FLYNN: The first is page 16 of that act, and the second is page 17 of the act.

COMMISSIONER GOZZI: Page 16 is MATFA.2 and -

MR FLYNN: And, commissioner, you can see -

COMMISSIONER GOZZI: - and MATFA.3 - MATFA.3 is page 17. Right.

MR FLYNN: - and you can see from that, commissioner, on the right-hand side of the page, I've actually inserted the correct amounts that should be paid, and you can see there for the '92/93 financial year, depending on which one you're looking at, page 16 shows until 31st December '92 it should be \$15.74 and so on down till it gets to the 9% in the year 2002 - \$35.41.

Commissioner, the Superannuation Guarantee Act requires these and places these, well, above and beyond the requirements of the award, I guess in this case.

COMMISSIONER GOZZI: Well it certainly does.

MR FLYNN: However - however, commissioner, I would - I would like to suggest that we correct our award - both awards - and in some form - and perhaps it may be similar to that as per the schedule in the Superannuation Guarantee (Administration) Act - place that into the award so that when there are future movements in the butchers wage those amounts would be indexed accordingly.

COMMISSIONER GOZZI: But does that - does that produce the desired result?

MR FLYNN: It does, commissioner. I've - I've checked out -

COMMISSIONER GOZZI: But -

MR FLYNN: - the Superannuation Guarantee Act thoroughly, and section 25(a) of that act, and I've actually spoken to the - the person that wrote that section for the government. That section of the act does allow this and does actually require this to occur in awards such as our own where a base rate has been set - in this case it's the butchers wage for both awards.

COMMISSIONER GOZZI: Yes, but those figures here that you've written in -

MR FLYNN: Mm.

COMMISSIONER GOZZI: - are calculations based on the existing tradespersons rates so there's not much point putting these in the award because they will vary as and when the award tradespersons rate moves.

MR FLYNN: Well, commissioner, I'm happy to remove some of them - take out whatever you need - however, by putting the table in, I suppose what I was suggesting was employers will be able to see what their liability is at the present rate if employees don't get another pay rise until the year 2002 - perish the thought - but if they don't and that is the rate and employers would know to budget up to \$35.41 per full-time employee for that period of time.

Now obviously by putting that in the award it's - I would hope that perhaps it gains more attention next time we have a state wage case -

COMMISSIONER GOZZI: Mm.

MR FLYNN: - and - or a separate claim in the Meat Trades & Abattoirs Award.

COMMISSIONER GOZZI: Mm. So I mean -

MR FLYNN: And those amounts will be indexed accordingly.

COMMISSIONER GOZZI: - I must say, you know, I have a view that having superannuation provisions in the award at is probably a waste of time, quite frankly. I mean they are now statutory provisions to provide that payment and the award really is a - is a useless appendix to all that, quite frankly.

MR FLYNN: Well, commissioner -

COMMISSIONER GOZZI: It's a statutory obligation upon employers and -

MR FLYNN: It is, commissioner, however in our own particular circumstance, as I say, subject to section 25(a) -

COMMISSIONER GOZZI: Mm.

MR FLYNN: - it is necessary to maintain that in the award.

COMMISSIONER GOZZI: Why?

MR FLYNN: Because it's based on a given classification of employee.

COMMISSIONER GOZZI: Yes, I'm wondering about that. So that's been accepted as a rationale because -

MR FLYNN: It certainly has.

COMMISSIONER GOZZI: - that - that process, as you and Mr Edwards and Mr Swallow are very much aware, produces a swings and roundabout situation because not everybody gets precisely 4% - some will get more - some will get a bit less -

MR FLYNN: Mm.

COMMISSIONER GOZZI: - depending on their award classification rate. And I'm just wondering in the strict context of the legislation what the situation is.

MR FLYNN: Well as I say, commissioner -

COMMISSIONER GOZZI: What I'm really asking is, is the tradesperson rate still relevant given the preciseness of the legislation?

MR FLYNN: Well, commissioner -

MR SWALLOW: It's still relevant as far as this -

COMMISSIONER GOZZI: Well hang on, Mr Swallow.

MR FLYNN: My - my research, commissioner, with goodness knows how many Australian Taxation Office personnel where I get one set of advice from the Hobart office, but thankfully I found the actual people that wrote this - this act and there is no doubt at all of the intention of section 25(a) and a number of other corresponding sections of the act, that the intention is there to maintain that which existed before a date - don't hold me to it - but I think it was August 1991 or thereabouts and it was - what was occurring in the award at that date is able to be and is actually, you know, according to this act, required to be transferred on and indexed accordingly as per your decision of the T2304 of 1990.

Now the act - the award - sorry - the act allows for the wording of the award to include that automatic indexation each time the classification wage moves, but also it allows for otherwise - I think those are the words that are used in here - and in this case, otherwise being your decision and the intent of your decision of 1990.

COMMISSIONER GOZZI: So you can be confident that your members and other employees who are not members of MATFA can't be prosecuted for not meeting the precise nature of the legislation?

MR FLYNN: I can be confident, commissioner, I wouldn't be here saying this if I wasn't -

COMMISSIONER GOZZI: Yes.

MR FLYNN: - and I've got a number of large members sitting behind me with long knives, I suppose.

COMMISSIONER GOZZI: No, that's fine. Alright, no that's - okay. Mr Flynn, what are you proposing happens with respect to the adjustments that should have been made in May '91 and August '91?

MR FLYNN: Well, commissioner, I'm suggesting that as the act came into place and operation on 1st July 1992, that we amend the superannuation contributions as at that date and we require back payment to that date to be made to - for all full time, part time, casual contributions.

COMMISSIONER GOZZI: Well, really to get it right, there should be a variation operative from May '91 which takes it to 11.50 and there should be a subsequent one from 31st August which takes it 11.80 and then there should be one from 1/7/92 which puts the 3% and the 4% situation in place for - does the 4% payroll apply to anybody in Tasmania?

MR FLYNN: Yes.

COMMISSIONER GOZZI: And then of course the 5% from 1/1/93 -

MR FLYNN: Mm.

COMMISSIONER GOZZI: - if you want to continue the award process, so there are one, two, three, four, five variations, I think.

MR FLYNN: Well, commissioner, we would - I'd argue that going back to that date in 1991 - may on the surface of it seem fair. I've got a few difficulties I'll say with my non-members and I'm sure it's up to Tasplan to go around and seek the back payments, but I've got some difficulty with some of those payments being made. I'd like to suggest that we consider another arrangement and you may wish to do this in conference, if it's possible for you to do it, and look at amending the rate from the period 1st July 1992 to somehow or other make up for that under contribution period back to May of 1991, which we freely admit exists.

So what I'm suggesting is, commissioner, perhaps we don't apply exactly the 3% or the 4% rate for a given period till we make up the payment that has been - or their under contributions for the earlier period back to 1991. Put a little bit extra on it, Mr Commissioner.

COMMISSIONER GOZZI: But that still goes back to 1/7/92.

MR FLYNN: That's correct, Mr Commissioner, we're prepared to accept -

COMMISSIONER GOZZI: So what's it -

MR FLYNN: - that. We're looking at a current financial year and in that case I believe that we can - we may be able to accommodate the requirements of the union at least, if we can accommodate the requirements of the commission.

COMMISSIONER GOZZI: Well it's only at the most 70 cents a week.

MR FLYNN: It's not a lot of money, commissioner, there's no doubt about that.

But getting the money back to 1991 I think is going to be a problem in some area. I think it's also going to be a difficulty for some companies that have obviously closed their books off for previous financial years too - and I'm talking probably the larger companies there

It would be much cleaner, shall I say, if we could date if from 1st July 1992, build in some make-up and - and add that as a flat amount. I'm fully prepared to tell the whole industry what is required and why it is being done.

COMMISSIONER GOZZI: Alright, thank you, Mr Flynn. Mr Edwards.

MR EDWARDS: Could I just have a moment with Mr Flynn before I do speak, commissioner?

COMMISSIONER GOZZI: Oh, well - left and right hand operate in tandem again. Mr Edwards?

MR EDWARDS: Thank you for that, commissioner, I just needed to seek clarification from Mr Flynn on one - one very minor issue. Having done that, commissioner, I have no hesitation in supporting the application by the Meat & Allied Trades Federation in the manner that's been advanced by Mr Flynn this morning. In respect of the question of operative date, I would adopt the submissions of Mr Flynn but I think it would be administratively far more convenient to limit retrospectivity to one financial year, and that suggestion put

forward by Mr Flynn as to how that might be achieved would receive our support.

Going to the - the origins of the flat rate of superannuation, the two awards in question, commissioner, I don't need I think to speak in any great length to you on this. You're obviously well familiar with the history of this where originally the parties came to you and put a proposal for a flat dollar amount for administrative ease, and that was based on the - the retail butcher rate.

You will further recall, I believe, commissioner, that in the decision that Mr Flynn has now put before you there was a review of that rate. That decision partially went against employers, as I recall it, on the question of retrospectivity inasmuch as you thought that the rate had slipped behind by the parties not doing what they ought to have been doing and it was in that context you made the observation that you did that Mr Flynn has now read into the record, that futuristically - or in fact he used the words naturally, that amount will vary consequential to future wage case decisions.

COMMISSIONER GOZZI: That's right.

MR EDWARDS: And it's that we're now trying to put in place. However, in doing that I share with Mr Flynn the doubt that some employers will in fact go back to 1991 - it is a very long time ago in the context of running a small business. Perhaps it would cause the administrative burden on the larger companies that it would on some of the small ones. However, having said that, we would unhesitatingly agree to the submission put by Mr Flynn that greater certainty will be created for employers out of the approach that MATFA have put forward to the commission today.

COMMISSIONER GOZZI: Alright, thank you, Mr Edwards. Mr Swallow?

MR SWALLOW: Mr Commissioner, I - in the absence of an agreement with MATFA, I'd - the union's submission would be that the - the five amendments apply. I mean you - if you can't afford seventy cents a week backpay it might have been that you should have been out of business in 1991.

You know, I just wouldn't like it to get into an administrative nightmare trying to - trying to work out what's what and - and for this commission I - and therefore I'd - if we can't reach agreement we - it could well be that we'll be to, but if we can't the union's submission would be that the five amendments apply.

COMMISSIONER GOZZI: Alright, thank you, Mr Swallow.

MR SWALLOW: And just - just - just for the record, Mr Commissioner, you mentioned there before about superannuation in - in the award now and its relevance. I - and that amount, whether it's the correct amount. I've got a - I've got a view that - that that rate although it's in the initial stage a percentage on the slaughterman's - I'm sorry - the butchers rate, I - I went along with that for the sake of administrative, probably, reasons be -

COMMISSIONER GOZZI: Yes, that - I think mostly that's what it was.

MR SWALLOW: - administrative reasons - and I - I'm starting to get the view and I'm indeed starting to get a bit of pressure that that rate ought no longer apply and it could well be that this inquiry that's being conducted now by the Federal Government -

COMMISSIONER GOZZI: Oh, the super inquiry?

MR SWALLOW: Yes, yes - into all aspects - into all aspects of superannuation, it could well be and it could well mean that this industry here in Tasmania - well they'd just have to make a radical departure from what's being considered the norm.

And I just say that for what it's worth and I just hear a little bit here and there as to what's coming out of that - that current inquiry and I think - I think the - there's a few insurance companies around the place might start having to show the cards to their - to their - to their clients rather than hide them in three or four separate accounts and _ and make it look good for the - for the investment one year and pluck a bit out of another account and another account - account three and account four and all of this type of thing. I've got a funny feeling that all of the cards might have to be on the table after this investigation and - and the Federal Government will introduce legislation along them lines. So I don't think it will be very long. I think it will, be sooner rather than later that - that there'll have to be radical departures in a lot of areas in the occupational superannuation area.

COMMISSIONER GOZZI: Alright. Mr Flynn, anything else on that point? Mr Edwards?

MR FLYNN: Well, Mr Commissioner, I guess when - when we - when we become privy to more detail of the superannuation inquiry we can look at the matter at that stage and perhaps make our own submissions at that time.

COMMISSIONER GOZZI: Well I was particularly - yes - I accept that, but I'm particularly referring to the position adopted by Mr Swallow which is different to what you're asking for

supported by Mr Edwards. He is in fact seeking the five adjustments to apply.

MR FLYNN: Well, commissioner, our position would be that they start from 1st July, but as I said, I'd be more than happy to enter into a conference with yourself and Mr Swallow, Mr Edwards and see if we can't work something out. Perhaps to date it from 1st July. I'm particularly anxious because I'm - I am well aware of - may occur with a requirement to backdate something to May of 1991 in perhaps some of the smaller businesses.

I'm also well aware of the difficulty that's going to create to budget some of the larger businesses. I know we're only talking about 70 cents a week but some of those larger businesses have 400 and 500 employees and it does add up. And also the calculations on part-time and casual, well, commissioner, I think you're going to keep a clerk going for a week or two so perhaps they should stay on 40 hours at least for the time being.

I believe that there is a problem going back before 1 July '92 but I'm happy to discuss that matter with you or to accept your guidance on that matter, given Mr Swallow's submission.

COMMISSIONER GOZZI: Well let me say that prima facie I'm attracted to going back to May '91. I understand what you say about the method of adjustment and so on and the problems that causes. In saying that I prefer to go back to '91, particularly in the absence of agreement between the two of you, is I'm very much aware, as you are, that this superannuation is portable and there will be people who have left the industry and they should not be forgotten in the exercise. So we're not just talking about current employees, we're also talking about people that have gone. So there is a retrospective adjustment that needs to be made, the first one is 40 cents a week to take it from \$11.10 to \$11.50, and the other one then is from \$11.50 to \$11.80, followed by the latest adjustment.

So my feeling is that the right and proper thing to do would be to go back to that date in May '91. Now if Mr Swallow and MATFA and TCI and people you represent can reach some agreement in terms of catching that up, both for present and past employees in an administratively simpler way, then certainly I'll look at it. I mean, you might have a discussion about that afterwards, but I guess my bottom line point, Mr Flynn, is that I don't want to compound an error by not adjusting it in a proper way so as to pick up the under-deductions that have been made.

MR SWALLOW: Mr Commissioner, I think Mr Flynn's trying to read into this argument that there's no way by law you can claim that money from '91.

COMMISSIONER GOZZI: I'm not sure he's saying that, no.

MR FLYNN: No.

MR SWALLOW: Oh, well, I'm sorry, I thought you were.

COMMISSIONER GOZZI: No, I think he -

MR SWALLOW: That's just not the case.

COMMISSIONER GOZZI: I think the view is that it would administratively simpler to catch up from 1 July '92, and I'm prepared to look at that if it can be demonstrated that that is the case. So you might have some discussions about it after the last point. What's the last point you want to address?

MR FLYNN: The next issue, sorry, it's the admission of a further occupational superannuation scheme into the Meat Trade and Abattoirs Awards, commissioner.

COMMISSIONER GOZZI: Right, okay, let's deal with that.

MR FLYNN: Just give me a few seconds to catch up.

COMMISSIONER GOZZI: That's on the basis that you are going to have some discussions between yourselves on this issue of retrospectivity after the hearing.

MR FLYNN: Yes.

COMMISSIONER GOZZI: Well I'll adjourn you into conference.

MR FLYNN: Yes, thank you, commissioner.

Right, commissioner, this matter goes to our application. It was a request from - in the early days the operators of both the Devonport and the Bridgewater Abattoirs to make application to amend the awards to include Legal and General's Direct Superannuation and a - what's the word - an approved contributory superannuation scheme in the award. As I understand it, the employees at both Bridgewater, Devonport and a number of other smaller operations throughout the state have been approached by Legal and General and this, I guess, commissioner, is in line with the requirements of the Industrial Relations Act which requires the commission to consider - and I'll just read to you, sir, from section 32 subsection (1B) which states:

In making or varying an award in relation to payment of contributions to a superannuation fund, the Commission must not refuse to make or vary that award if the superannuation fund -

(a) is a complying superannuation fund; and

(b) is one which the Commission is satisfied meets the wishes of employees.

It goes on then, commissioner.

Now in this case, commissioner, this particular firm, Legal and General, are well aware of the requirements of the act and, I guess, the only way that you can demonstrate the wishes of the employees is to approach the employees, and that is, in fact, what happened. I do today, commissioner, have with me Mr Russell Taylor from Legal and General who will deal with perhaps some of the more detailed information on the performance of Legal and General and on their registration or acceptance under the occupational - I can't think what it's called, commissioner, the act that actually applies - that requires the fund to be a complying fund.

And, commissioner, we submit, that as there is a request in writing - and I have here signed a document that Mr Taylor has delivered to me from Bridgewater Abattoirs. And I'll read it into transcript, commissioner, and provide a copy to you. Headed up:

Bridgewater Abattoirs Pty Ltd

A Meeting of employees was held at 10.00 a.m. on June 16th to discuss the comparison of features, benefits and cost of Tas Plan and Legal & Generals Direct Super.

The Employees were made aware that the award they were currently being paid under required amendment to allow Bridgewater Abattoirs Pty Ltd to contribute their award superannuation entitlements to Legal & General.

At the conclusion of the meeting the members agreed to have Legal & General Direct Super as their preferred plan and signed the attached membership application forms indicating their support for the amendment.

Mr Reginald Davey
Representative
Australian Meat Industry Employees Union

Commissioner, I have a couple of copies of that here.

COMMISSIONER GOZZI: That's exhibit MATFA.4.

MR FLYNN: Commissioner, as well as that - and as I say I'd like to hand over to Mr Taylor for some of the more detailed questioning that you would probably have for him on behalf of Legal and General. But I also have a copy of a document which states that - from the Insurance and Superannuation Commission, that Legal and General is, in fact, an approved and complying fund for taxation purposes and I'd like to hand those in also, commissioner, as an exhibit.

COMMISSIONER GOZZI: Exhibit MATFA.5. Where are the membership application forms?

MR FLYNN: Mr Taylor has those, commissioner, and we would submit that he doesn't have six copies of each. There are quite a number of these as you would imagine, but if you'd like to view them -

COMMISSIONER GOZZI: Well perhaps you could put Mr Taylor in the witness box.

MR FLYNN: Certainly, Mr Commissioner.

RUSSELL TAYLOR, sworn:

COMMISSIONER GOZZI: Please sit down, Mr Taylor?... Thank you.

MR FLYNN: Thank you, commissioner. Mr Taylor, I have in my possession a document signed by Mr Reginald Davey representing the AMIEU at Bridgewater requesting that Legal and General Superannuation become a recognised fund under the Meat Trades and Abattoirs Awards. Now obviously Mr Davey's request leads only to the Abattoirs Award, in this case Bridgewater, however do you have any other applications that may comply in the other sectors of the awards?... Yes, I have an application from a retail butcher shop to include their employees under that same award - same conditions.

Mr Taylor, you might also like to help us. Were any - was any contact made with the union regarding the Legal and General Direct Super Fund?... Yes. We contacted Mr Swallow and made him aware of our fund and the cost comparisons of that and the existing fund Tasplan some five or six months ago - early this year. So he's fully aware of it right from the word go when we spoke - before we even spoke to the employees of any abattoir.

And just finally from me, Mr Taylor, could you please just give us some details of your complying fund registration and what that actually means to the commission and when that was actually received by Legal and General Direct Super?... We have a letter from the ISC referring to our letter of the 7th

of November 1988 regarding information for preliminary listing of the Legal and General Employed Person Superannuation Fund of which Direct Super forms a part of.

COMMISSIONER GOZZI: So what is the fund actually being put forward?... Legal and General Direct Super, and I have -

Can I have a copy of that as an exhibit?... That's the letter you already have, commissioner, from the ISC.

The - ?... MATFA.4 or 5.

MR FLYNN: 5.

COMMISSIONER GOZZI: Oh, right, that's the letter?... Yes.

Right?... I also have a further internal document from within Legal and General which mentions details of people getting public access to the ISC on complying funds and this states that although our fund is not mentioned there, we have had compliance from the ISC and that's just an internal memo, if that can be submitted.

Mr Taylor, where in that letter from the ISC - you might be able to direct me to it quickly - does it make reference to the fact that Legal and General Direct Super is a complying fund?... It doesn't, Mr Commissioner. It just simply says: Legal and General Employed Persons Superannuation Fund of which Legal and General Direct Super is part thereof.

Well, where do I find that that's the case?... If you could -

MR FLYNN: Commissioner, perhaps if I could enter another couple of copies into evidence. I'm sorry. I omitted to that before. Mr Taylor did give them to me earlier.

COMMISSIONER GOZZI: Exhibit MATFA.6. What does MATFA.6 do for us?... If you look at the - if I could perhaps read it, Mr Commissioner:

In the case of our "public" funds-Master Trust including Supereasy and Direct Super as well as Supercard, SAFE and our 3 Personal Super Funds most are not yet listed as complying for the 1991-92 and the L&G Pension Fund -

- and it goes on, because of the ISC Database not accepting it at this stage.

Right. So, where does that leave us?... Well it leaves us, Mr Commissioner, that it is a complying fund, although it's not simply on their register, purely and simply for administrative reasons because they are taking them in a staggered lodgement program throughout the year and that's the only reason.

Where do I get from this that it's a complying fund?... If you

I mean, look, the tests on the commission, Mr Taylor, are to ensure that the fund is a complying fund, and secondly, that the change meets the requirements of all employees. Now the first criteria is that I want to be absolutely certain that it is a complying fund. Now, I'm quite prepared to take your word for it, but I want to see evidentiary proof of the fact that it is a complying fund. Now, where do I see that?... Well the only place to see it from is the ISC, however, they don't have it on their public register.

Well - ?... But it is a complying fund as for - all the taxation purposes which satisfies the Occupational Superannuation Standards Act 1987.

Yes, but you say that; where do I get that from the ISC where - the document, MATFA.6, what's that - who is that from?... That is from the secretary, Trustee Committee, Legal and General Employed Persons Superannuation Fund.

But that really doesn't help me, does it, because that's from the company itself?... That's correct. I said it before, it's an internal memo.

Yes, yes, it's an internal memo?... Yes.

Mr Flynn, normally I would expect to have a letter from the ISC which would indicate that it has been given interim listing and that it will be recognised as a complying fund. Now, what the ISC letter does is nominate Legal and General Employed Persons Superannuation Fund, but it doesn't go on and refer specifically to the fund that you want to put - you want me to put into the award.

MR FLYNN: I see the dilemma, commissioner, and quite frankly was not aware that the letter from the Insurance and Superannuation Commission did not in fact list Supereasy or whatever it is called. I guess that it's - perhaps Mr Taylor can help us with the name change or if there has been a name change or why the fund is actually separate to that listed in the ISC -?... The - Mr Commissioner, the Employed Persons Superannuation Fund is the master fund which all sub funds come under the same trust deed and direct -

COMMISSIONER GOZZI: Yes, but I don't know that. I mean, you're telling me that, and I've got no reason to doubt you, but it is customary, as I have pointed out to Mr Flynn, for the ISC to make that observation and the ISC approval really ought to be in the context of the specific fund that is being sought to be put into the award. Now, leaving that to one side just for the moment, the other thing that I need to be

totally sure about is that the employees concerned in fact want to be covered by that particular fund. Now, in that context letter from Mr Davey refers to a meeting - and I suppose what I would like to see is the membership application forms by the employees concerned?... I have them here, Mr Commissioner, photocopies thereof.

For all employees?... For all employees.

Okay. Well - ?...

Could I have that as an exhibit?

MR FLYNN: Commissioner, are they confidential documents by any chance? That's a question, perhaps, to Mr Taylor.

COMMISSIONER GOZZI: Well, I mean, I could ask him for a stat declaration if you prefer. I mean, I want to know some - in some tangible way that the employees concerned have, in fact, considered the circumstance and they are prepared to go into that particular fund. Now -

MR FLYNN: I'm just asking the question, Mr Commissioner, for Mr Taylor.

COMMISSIONER GOZZI: Yes. Certainly, this letter from Mr Davey doesn't give me that information and I'm not prepared to accept it on that alone.

MR FLYNN: Well the letter actually refers to these applications, commissioner -

COMMISSIONER GOZZI: Yes, that's right.

MR FLYNN: - which we don't have a number of copies with us. We've got one copy only, but that's up to Mr Taylor how far we can distribute them.

COMMISSIONER GOZZI: Yes?... They are photocopies and I'm prepared to give them to you, Mr Commissioner.

Yes. Okay. Exhibit MATFA.7. Now this is in respect of every employee subject to the award at Bridgewater?... With the exception of any employee that was on annual leave. There were a couple that were on annual leave.

It's my understanding that the majority provisions don't apply to this particular ruling. See, I'm being asked by Mr Flynn to change superannuation arrangements for Bridgewater and also for Devonport. Now, if there are any employees that don't want to be part of Legal and General, what happens then?

MR FLYNN: Well, commissioner, obviously the employers would prefer to only write one cheque each month or each quarter as

they have to contribute to a complying fund and therefore, commissioner, I suppose it's really up to the Legal and General people to either talk them all into it or not. I haven't actually gone into great detail with either of the employers involved and frankly, sir, I would have to probably advance a position here and now that unless it was the requirement of the employer, only one fund would be applicable to each particular firm, however, if an employer wished to write out more than one cheque a month, then I think he should be able to do so voluntarily.

COMMISSIONER GOZZI: Well, look, I have got no quibble at all - and obviously legislation doesn't allow me to quibble anyway - about granting an exemption, but I'm going to make doubly sure that in putting - or not granting exemption, in putting an alternative scheme in the award to replace an existing one, that: (a) it is a complying fund and; secondly, that every employee that is going to be affected by that change, in fact, wants to make the change. Now it's up to you to demonstrate that unequivocally and if it's not demonstrated unequivocally, you're not going to get anywhere with it as far as I'm concerned.

MR FLYNN: Well, commissioner, perhaps I could just follow your line of argument and -

COMMISSIONER GOZZI: Well it's not argument. I'm just pointing out what I would want you to do.

MR FLYNN: Well, sorry, your line of fact, commissioner, your line of fact.

COMMISSIONER GOZZI: Yes.

MR FLYNN: Commissioner, I suppose what's actually happening out there - and I dare say it's not just Legal and General. It's just that they have happened to get off their tail and done something about it -

COMMISSIONER GOZZI: Oh -

MR FLYNN: - there are a number of complying funds that currently don't have access to employees within the Meat Trades and Abattoirs Awards. Mr Swallow's own Australasian Meat Industry Employees Superannuation Fund, MATFA's own Australian Meat Industry Superannuation Trust - we'd probably all like to have a swing at employees in Tasmania. We don't have any difficulty -

COMMISSIONER GOZZI: It doesn't - wouldn't concern me, Mr Flynn, if we've got 55,000 funds in the award providing they comply and provided that the employees concerned want to be in it.

MR FLYNN: Well, commissioner, on that basis -

COMMISSIONER GOZZI: It's a matter of choice which the act has changed to allow that choice. I've got no difficulty with it, but I want to be doubly sure that, as I say, it's a complying fund and the employees concerned want to be in it.

MR FLYNN: Well, commissioner, is it possible then that perhaps no fund is listed in the award and the award is left open for any complying fund to apply?

COMMISSIONER GOZZI: Well -

MR FLYNN: Given the requirements of the act - I mean, if anybody's going to break the conditions of the act, well I guess it's at their peril, but, commissioner, I believe - and perhaps Mr Taylor can speak for himself - I don't believe there's any particular fund at the present time except Tasplan that would really only want one complying superannuation fund listed in either of these awards.

COMMISSIONER GOZZI: Well -

MR FLYNN: Commissioner, we're not here trying to advocate purely and simply for Legal and General although that's what the application says. We're here looking at freedom of choice under the awards and if a fund complies and if an employee has a will to go with a complying fund, I can see no reason why we should stay in their path. If there are better benefits under Legal and General than there are currently under Tasplan, if there are better benefits under Mr Swallow's AMIEU or our own, let them make the decision.

COMMISSIONER GOZZI: Look, I think, Mr Flynn, I think the answer to that is simply this; that occupational superannuation is currently in the award. I think the amendment to the act allows other funds to be put in the award at the - if employees so want that fund and there are tests imposed on the commission to make sure that the fund is complying, and secondly, that it does meet the wishes of employees.

Now I think that's there because at this stage superannuation is still part and parcel of the award, so we come from a base where the tests were a lot stricter in terms of who should be in and who should be out, to a relaxation of that, but I think the fundamental issue is that they still propose to be in the award, and secondly, that people come along seeking to change existing arrangements that those test be met. So, I'm not prepared to go to the extent that you want to go.

Notwithstanding I said earlier - I don't really see much point in continuing on superannuation in the award. I really don't, but I think the way it currently is framed - legislation is

framed - that those tests are proposed to be applied by the commission and I intend to do that in respect of individual applications that come forward. Now it's up to the parties in making those applications, to make sure that I can be relaxed about the wishes of employees in particular. I mean, I've got no doubts, from what Mr Taylor's saying, that the fund is a complying fund, but there again, the onus of proof is very squarely on the applicant and I don't think it's - in those circumstances, it's sufficient, quite honestly, to only have a letter which gives an umbrella coverage to a specific fund sought to be put in an award.

MR FLYNN: And I can see the dilemma there, commissioner, no doubt about that, and I'm that given the administrative requirements of the ISC, we can obtain that in due course and obviously produce that as evidence to you.

COMMISSIONER GOZZI: Well, look, I'd be happy - if I could be satisfied on the employee's question, I'd be happy to accept the word of Mr Taylor - the sworn evidence of Mr Taylor, subject to some letter coming in in support of that evidence. I mean, I don't want to reconvene on that issue if I can avoid it, but I mean, I'm not really satisfied yet - to leave that issue of complying funds to one side - that every employee has been covered.

MR FLYNN: Well, commissioner, I suppose we've only got Mr Taylor's word for the fact that all of those at work on that particular day have signed up, and those that on annual leave obviously haven't had that opportunity and I guess it behoves the employer in this case that if those employees don't wish to go with Legal and General, then he'll be - if you take my point - writing our two cheques a month whether he likes it or not.

COMMISSIONER GOZZI: So, are you saying then that I should -

MR FLYNN: If those employees -

COMMISSIONER GOZZI: - vary the award to include both - to leave Tasplan there for Bridgewater and include also Legal and General Direct Superannuation?

MR FLYNN: Well, commissioner, I would be seeking that the award be amended across-the-board rather than just for Bridgewater and Devonport. I can imagine the situation if Legal and General do their job, I'm going to be jumping up here every 10 minutes requesting -

COMMISSIONER GOZZI: And so - yes -

MR FLYNN: - requesting that this commission consider an application for Joe Bloggs Butchery up the road -

COMMISSIONER GOZZI: Well that's exactly what I'm saying that you should be doing and - because I'm not going to give you that blanket exemption - or that blanket change because I think the onus is very much on the commission to test each application in respect of the complying fund and the requests - the requirement of employees. You can't have a blanket exemption from that test that applies to individual employees. I wouldn't give it to you anyway.

MR FLYNN: Thank you, commissioner.

COMMISSIONER GOZZI: Well I think it would be quite wrong.

MR FLYNN: However, commissioner, is it possible though, if the union and MATFA agree that perhaps the award be opened up and any fund be allowed to be - as long as it complies - be available?

COMMISSIONER GOZZI: Well I'd still have to have a hearing to demonstrate it to me before I put it in.

MR FLYNN: So we're stuck with that position, like it or lump it, commissioner?

COMMISSIONER GOZZI: Yes, that's the way I see it.

Were you present at the meeting, Mr Taylor?... I was.

Were there any dissensions?... There was one chappie that wanted to stay with Tasplan, yes.

Mr Flynn, what do you propose happens to the employee that wants to stay with Tasplan?

MR FLYNN: Are you saying in these cases that we're talking about of that particular butcher shop and the two abattoirs, commissioner?

COMMISSIONER GOZZI: Well I've just -

MR FLYNN: Sorry, I wasn't -

COMMISSIONER GOZZI: - ascertained from Mr Taylor - he's your witness.

MR FLYNN: Sorry, Mr Commissioner, you were asking questions at the time and I was listening to Mr Edwards.

COMMISSIONER GOZZI: Mr Taylor indicated there was one employee who wanted to stay with Tasplan.

MR FLYNN: If that's the case then, commissioner, and the employers have asked me to put this forward on behalf of Devonport and Bridgewater Abattoirs, then the employers will

be continuing to pay towards Tasplan. I don't think anybody's out to force any employee to go one way or another. In this particular circumstance, that would be the position, commissioner. This request goes back a number of months from Devonport and Bridgewater Abattoirs if you like -

COMMISSIONER GOZZI: Oh, no, I'm -

MR FLYNN: It goes back to the 4th of April when I was first asked to put the application in.

COMMISSIONER GOZZI: All right. Anything further, Mr Edwards or Mr Flynn?

MR FLYNN: No, commissioner.

COMMISSIONER GOZZI: Mr Edwards, do you want to put anything to Mr - ?

MR EDWARDS: No, no cross -

COMMISSIONER GOZZI: No? All right. Mr Swallow?

MR SWALLOW: I'd just like to know a little bit more about this all sub funds under trust deed. What's - could you explain that to me, what that means?... Well -

How many sub funds has Legal and General got, for example?... We have a fund called 'Supereasy, Direct Super, Supercard, SAFE', and three personal super funds.

I'm not good at shorthand. How many is that all up?... Six I think.

And how do they work?... How do they work? In what respect?

How did they work?... I beg your pardon?

I said, how did they work?... I'm not sure I follow your meaning in how did they work.

Oh, well, I'm only a novice at this superannuation game and I'd just heard you say there a moment ago that all sub funds are now under the one trust deed and there was six of those?... That's correct.

And now there's only one?... No, I'm -

There's six?... I'm not -

COMMISSIONER GOZZI: There's six under the - ?... There's one trust deed. It's six funds. I don't any complication with that.

MR SWALLOW: Oh, no, that's all right.

COMMISSIONER GOZZI: All right. Mr Flynn, anything else, any re-examination?

MR FLYNN: No, I don't think so, Mr Commissioner.

COMMISSIONER GOZZI: All right. Thank you, Mr Taylor, you can stand down?... Thank you.

I suppose what I'd like to be addressed on, Mr Flynn, Mr Edwards and Mr Swallow, is your view about section 32 going to the meaning of 32(1)(bb) which is talking about complying funds is one which the commission is satisfied it meets the wishes of employees. Does that mean, in your view, all employees; the majority of employees, and what should happen, in your submission, where even one employee - as has been indicated by Mr Taylor - still wants to carry on with the existing scheme in the award. Would you like to have a go, Mr Flynn?

MR FLYNN: Well, Mr Commissioner, I would and I thank you very much for asking me the question that I asked you last week regarding clause 32(1)(bb). Unfortunately our interpretations vary there, commissioner, and perhaps we should take this matter to another authority for interpretation, but that was a painful experience too, so let's not do that again.

COMMISSIONER GOZZI: Where would you take it to?

MR EDWARDS: Supreme Court.

MR FLYNN: I was just - I don't know, commissioner. I was thinking of this commission, but as I said, last time we took that to an interpretation that was a painful experience; I won't do that again in a hurry.

COMMISSIONER GOZZI: No, this is not the award, this is the act.

MR FLYNN: No, I know, commissioner, but I'm looking for a different set of words to those you gave me last week.

Quite honestly, commissioner, when I read that section of the act - and I'll be honest about it, Legal and General pointed this section of the act out to me, not Mr Taylor but another employee - I was convinced that if it was a complying superannuation fund and if the employees wish to go that way, then I could see no reason why the commission would have any difficulty with it. If an employee was placed under duress and forced to go in it and complained back through the union or direct to this commission, which they now have the

opportunity to do, then I guess I would see the commission as having a part to play at that stage.

Frankly, if it means what you say it means, commissioner, then I think that this section of the act has probably gone beyond the bounds of what it was intended to be in the first place. And, as you'd be well aware, I supported the amendments to the act in Parliament and I certainly did not understand this to mean exactly what you're interpreting it as meaning.

COMMISSIONER GOZZI: I'm asking you what you think it means.

MR FLYNN: Well what I think it means, commissioner, is that unless an employee is forced into a fund against his will, and he's quite happy to go with that fund, then I don't see any reason why this commission should stand in his way to do so.

COMMISSIONER GOZZI: I'm not suggesting that the commission would.

MR FLYNN: Well, commissioner, I suppose I'm taking it back to the open award situation where I don't believe the commission, and I've got some sympathy for what you were saying before about the award being free of the matter of superannuation, in some aspects, at least. And I'm suggesting that any other superannuation fund, particularly one that can demonstrate that perhaps it does provide better benefits for employees, should be available to the employees and also, I guess, it gets back to how it's sold to them by the people that are actually out there in the field. If they are doing a better job than Tasplan currently are, then why shouldn't they be able to gain access through the award.

COMMISSIONER GOZZI: But that's not the point that I'm asking you, Mr Flynn.

MR FLYNN: Am I avoiding that point, am I, commissioner?

COMMISSIONER GOZZI: Yes, you are. I want a serious submission from you in respect to that important point.

MR FLYNN: Well, commissioner, I can only go as far as -

COMMISSIONER GOZZI: It's arisen in respect of this particular application. I'm simply saying that whilst the commission can't refuse to include a complying fund where it meets the wishes of employees, what happens, what test should be applied in respect or what standard should be applied in respect of wishes of employees? Does it mean that if one employee dissents, that that employee should be able to continue to contribute to an existing fund?

MR FLYNN: Well, commissioner, I don't believe that there's any requirement under the act that says that employees have to

go with any particular fund. You might correct me on that. And in this instance, given that the employers made the application, I'm saying that if one of those employees doesn't wish to go with Legal and General, the employers will just have to make that cheque payable on a once monthly or once quarterly basis to Tasplan.

COMMISSIONER GOZZI: All right -

MR FLYNN: So therefore the employees that wish to stay with Tasplan can so do.

COMMISSIONER GOZZI: So the variation that you're then seeking - if that is the position of MATFA, the variation would be - and I think you might have even contemplated this in your application, I'm not sure - that Bridgewater be nominated to have Tasplan apply to it and also the Legal and General Direct Superannuation Fund.

MR FLYNN: Well that certainly wasn't the intention originally, commissioner, but to facilitate some move to the Legal and General fund, given that you receive the evidence that it is a complying superannuation fund, then I believe that would be acceptable.

COMMISSIONER GOZZI: Yes. I mean, I'm really -

MR FLYNN: There is no doubt, commissioner, that my intent was to have Legal and General registered in both awards across the board being accessible, as is the current Tasplan scheme. And I really - I guess I'm having difficulty coming to grips with why we are favouring Tasplan above another scheme, given that it went in the award by agreement in the first place. I admit all that. But it now seems that Tasplan has got favoured position and Mr Swallow would no doubt admit the same as I do, that we both suffer quite a number of complaints about the Tasplan scheme.

COMMISSIONER GOZZI: Look, I don't want to get into that; that's not the point. The point is, the point is that the award was varied when the act was different and it provided for Tasplan and in some cases there is debate about various schemes and determinations were made. The point is that the legislation has now been varied to allow other funds to go in subject to meeting certain criteria. And it's the commission's responsibility to make sure that that criteria is met.

Now Mr Taylor has given evidence in respect of one of the criteria, a) it's a complying fund and, secondly, that it meets the wishes of employees. I'm simply saying that criteria needs to be tested by the commission and if some employees don't want to change from what they've got, are you saying to me that then employers are quite prepared to

continue on with the existing fund that those employees that don't want to change will want to continue to contribute to, in addition to the one that meets the wishes of employees?

MR FLYNN: Well that's the situation at the moment with Bridgewater and with Devonport.

COMMISSIONER GOZZI: Right. So in respect of Bridgewater we would then say the existing fund and Legal and General. Is that - I mean - look, this is really a new set of circumstances and I don't think these questions have been asked in previous hearings, but I think they're important points and I'm very interested to hear what you and Mr Edwards have got to say about it.

MR FLYNN: Well specifically for Bridgewater and for Devonport - I'll state that on the record, commissioner - that is what is required. Now, as I mentioned before, that certainly wasn't the intention of the original claim but to facilitate it I believe we could accept those positions at this stage.

COMMISSIONER GOZZI: Okay, well if we look at the clause then the Meat Trades Award - I think it's page 64. Where do you see or how do you see that the variation should be effected with respect to clause 48 in the Meat Trades Award to give effect to what you want to do?

MR FLYNN: Well, commissioner, perhaps we should be in the Abattoirs Award as we're talking about Devonport and Bridgewater at this stage.

COMMISSIONER GOZZI: Oh, well, I'm sorry.

MR FLYNN: It's clause 50 on page 66.

COMMISSIONER GOZZI: In fact, the form will probably be the same, but still, page 66.

MR FLYNN: And I note there, commissioner, that we've got exemptions listed at subsection (d) which includes R.J. Gilbertsons, Hawkridge Meat Company and R.J. Gilbertson Pty Ltd - one of them is Longford Pty Ltd, sorry.

COMMISSIONER GOZZI: Yes, that's right.

MR FLYNN: It could be, commissioner, that in that clause there with a given form of words that you're requiring, I think that the clause could be facilitated.

COMMISSIONER GOZZI: So you're really saying that - but if I put Bridgewater into the exemptions there, what happens to the existing employee?

MR FLYNN: Well, commissioner, I believe that we could put a clause in there that would allow either in the case of Devonport City Abattoirs and Bridgewater Abattoirs.

It would simply be a matter of a further addendum to that clause which would state that perhaps we should have a number 3 in there: the following employers will be exempt from the provisions of this clause, suffice to say that legal - sorry - that any employee wishing to stay with the Tasplan scheme can so do or something along those lines. You know, I mean we'll work the form of words out later, commissioner. I've got to be honest with you, I hadn't - hadn't considered those form of words because it certainly wasn't where I'd hope we'd be at this stage.

COMMISSIONER GOZZI: Mm. Alright - alright, thanks, Mr Flynn. Mr Edwards?

MR EDWARDS: Commissioner, I intend today to limit my submission, or comments to the commission, to the provisions of the act and not to delve in any specific way into the actual circumstances surrounding the application insofar as it relates to Bridgewater or Devonport because I'm not familiar with the facts and nor do I therefore wish to comment on them.

I come then, sir, to the comments that you've been making in respect of section 32 subsections (1)(b) and (1)(c) and (1)(d) of the - of the act. In my submission section 32(1)(b) indicates that where the commission is dealing - and I'll paraphrase a little - where the commission is dealing with an application to vary an award to prescribe a particular superannuation fund, the commission has enjoined that it cannot refuse that application - in other words, it must grant it - providing that the commission is satisfied that the award is a complying superannuation fund which you've already dealt with this morning. And secondly, the commission must satisfy itself that the scheme is one which meets the wishes of the employees. It doesn't say all of the employees, it doesn't say some of the employees and -

COMMISSIONER GOZZI: Well it's the dilemma I've been trying with Mr Flynn.

MR EDWARDS: It is indeed the dilemma and that's why I'm coming to that point - that it is non-specific on that subject. So really it does leave a discretion to the commission in my submission to determine how it will deal with this particular issue. I concede that that is a difficult discretion to exercise when it's one that is arising out of the drafting of legislation and the commission is treading a fairly tight line as to whether or not it is or is not complying with the provisions of the particular piece of legislation.

In our view, the words mean that if an application comes to the commission it must be granted providing those employees who wish it to be granted are able to satisfy the commission that they - that that is what they desire. So in the context of the Bridgewater application we have one employee standing aside.

COMMISSIONER GOZZI: One that we know of.

MR EDWARDS: One that we know of - I'll just deal with that one issue - and use it as a for example rather than dealing with the factual position, if you wouldn't mind, commissioner. Where that one employee doesn't to wish to move across to another fund, then the award once varied would need to deal with that question to allow that employee to remain under Tasplan. In other words, those that do wish - those employees of that company that do wish to move to the Legal & General fund, must be able by award prescription to do so - I think that's what this provision is saying - the one that does not must also be also be allowed to remain where he is because that is the employee's wish.

And I think this is the fundamental criteria that everyone's going to have to come to grips with. But what the employer wants in this exercise is totally immaterial. It's got absolutely nothing to do with the exercise. What is important is what the employees want and this is where these proponents of freedom of choice that sought the variation to the act slightly missed the mark when they got this prescription put in by the minister - that the freedom of choice is one-sided, but maybe it should be because it is the employee's money after all, but it does then lead to the potential that Mr Flynn's already alerted the commission to, where an employer may, by award prescription be required to contribute to a multiplicity of funds which is contrary to the principles of the commission.

COMMISSIONER GOZZI: Well I don't think they're relevant any longer in the context of this variation.

MR EDWARDS: I think they are, commissioner, if one goes to one dealing with the question of the amount of contribution, but I certainly take on board your comments so far as the number of funds are concerned.

COMMISSIONER GOZZI: Multiplicity is what I was talking about.

MR EDWARDS: Correct. So it could well be in the case of Bridgewater, given the fullness of time and the varying performance of funds, if you take this to its logical conclusion, each and every employee may have made a different election, and of course they can have an application made to vary the award to enable that election to be recorded in the

award will be the wish of the employee and the commission won't be able to reject it providing the fund sought is a complying fund.

Now I don't think that's the original intent of the legislature in putting together this particular prescription, but there's no doubt that's the way it reads - that it's the wishes of the employees that must be respected. In the case of the individual employee at Bridgewater who has elected to stand aside, he must be allowed to do so.

On the - on the question of Mr Flynn's submission of an open variation to the - to the award based purely on the legislative framework, I tend to agree with the commission that that would not be available to the applicant.

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

MR EDWARDS: I'd perhaps - not quite as usual as it ought to be, commissioner, but we agree - this time we do.

COMMISSIONER GOZZI: Oh now, Mr Edwards, don't be like that.

MR EDWARDS: We do have our moments, sir.

COMMISSIONER GOZZI: You and Mr Flynn and I often agree to disagree.

MR EDWARDS: To disagree, yes. Yes, it's probably the tag that's important. But I don't think an application made to vary an award in toto could succeed on the basis of the form of words in the act unless the commission can be satisfied that each and every employee in the industry that the award relates to is satisfied and wishes to go that way. And, you know, that's going to be a - a headache for us all, I suspect, down the track, unless -

COMMISSIONER GOZZI: What about -

MR EDWARDS: - unless of course your comment of earlier, that the commission ought to vacate the area of superannuation comes to fruition.

COMMISSIONER GOZZI: I've got no doubt - I've got no doubts that it should.

MR EDWARDS: You may be interested, commissioner, to learn that I ran that case in the federal commission before a full bench earlier this year and the commission decided that it would not take that step but would lump that question in with its review of the principles generally and is therefore now one of the issues that will be considered by a full bench of the commission in the review of wage fixing principles.

COMMISSIONER GOZZI: Yes, I'm aware of that. I just don't see any role for the commission to play in this area now that the legislation is the way it is. But anyway that's another - that's another issue.

MR EDWARDS: I think the discretion of the commission other than nominating funds has been removed and indeed the particular variation to the Industrial Relations Act has taken a fair amount of that discretion away from the commission as well.

COMMISSIONER GOZZI: Well it makes a nonsense of all the arguments that were run a couple of years ago or whenever, about multiplicity of administrative costs and diversity, portability and goodness knows what else. I mean there's a whole lot of case law that's totally irrelevant by the legislation.

MR EDWARDS: Exactly, commissioner.

COMMISSIONER GOZZI: And, you know, from my point of view, given the overriding superannuation legislation that's in place anyway, it seems to be stupid to have an ongoing award provision. But anyway, that's not the issue here, that's -

MR EDWARDS: No, you won't draw me on those merit considerations today, commissioner, I'll limit myself to the comments I've made about what I believe the act means and I don't think I can be any clearer than I have.

COMMISSIONER GOZZI: Yes, thank you, Mr Edwards.

MR EDWARDS: If it please the commission.

COMMISSIONER GOZZI: Mr Swallow?

MR SWALLOW: There's a lot like I mentioned early in the piece, I - I think I've - if I remember rightly, when these - when we went through these exemptions here some time ago, I can remember Legal & General's name in the ring.

COMMISSIONER GOZZI: There were a whole lot at the time.

MR SWALLOW: Yes, yes, two or three - Legal & General's was one of them. The only thing I'd - I think we tend to forget how Tasplan in the meat industry evolved. And what happened then, the - we called for tenders - the Trades and Labor Council called for tenders - and by unanimous vote the executive picked Tasplan and the reasons were obvious to make it administratively reasonably easy for all employers rather than have 20 employees with wanting to be in 20 separate funds which would become an administrative nightmare, all of those things were canvassed.

The outcome was, at that point in time, that Tasplan got the nod and it's a simple matter of fact that - that they're not performing as well as they were when they got the nod.

Now I - I believe that the - sooner, rather than later, that the criteria will be changed and it could well be that all employees will be able to join any funds they like and if we're going to change I'd be tempted to go along that - that path and that of course - it would wipe the commission as far as occupational superannuation goes and leave it up to the individual employees.

I think -

COMMISSIONER GOZZI: Legislation I don't believe allows that to happen at this stage.

MR SWALLOW: Yes - so in other words, what I'm saying, if we open up the - if we open up the floodgates we can't be seen to be - to be giving Legal & General a favoured run.

COMMISSIONER GOZZI: Well they're not getting a favoured run, they just made application through MATFA to give effect to what the legislation allows them to do.

MR SWALLOW: Yes, but see -

COMMISSIONER GOZZI: Everybody else can - any other company can do the same if they want to.

MR SWALLOW: Oh, yes, well that's what I'm saying. Oh yes, yes, I - don't misunderstood what I said -

COMMISSIONER GOZZI: No.

MR SWALLOW: - it's just - so in other words I could go out there tomorrow - I haven't had a meeting - I haven't spoken to anyone out there to be truthful about superannuation, Tasplan or otherwise. I wasn't asked. The reasons would be obvious why I wasn't asked, because I'd suggest it to be a lot more employees out there that would like to stop in Tasplan too. And indeed I suppose if I brought Wally Curran over from Victoria and spoke about the Meat Industry Superannuation Fund it's got 80 million, \$90 million in it now, I'm sure we'd get a number out at Bridgewater that would want to join that fund, and of course we could -

COMMISSIONER GOZZI: Well legislation allows them to do it, Mr Swallow.

MR SWALLOW: Yes, this is what I'm saying - this is what I'm saying.

COMMISSIONER GOZZI: Subject to it be a complying fund and it reaches the wishes of employees.

MR SWALLOW: Of course, of course, of course. I'm just - I'm just stating that -

COMMISSIONER GOZZI: Yes.

MR SWALLOW: - if we're going to give everybody - if we're going to open up the floodgates and we're going to give everyone a say, it's got to go right across the board to them all. The meat industry's funds got to have a chance to go out there and speak to the employees and check out how many wants to join that. Jo Blow's fund - or whatever you like to call it can go out and have a yarn, and before you'd know where you are, we're back where we thought we were going to be in the first place - the reason we chose the one fund. And that was because it wouldn't be an administrative nightmare for the employers. And the reason why we chose the butchers rate was again, like I said before, so it wouldn't be an administrative nightmare for employers with 20 different - 20 employees, 20 different funds and 20 different rates to be deducted each week - you'd darn near want a full-time clerk to keep up with it.

That's the reason why we chose Tasplan.

Now, for the commission's information -

COMMISSIONER GOZZI: historical summary, Mr Swallow.

MR SWALLOW: Yes.

COMMISSIONER GOZZI: Not relevant to this though.

MR SWALLOW: Oh no. But for the commission's information, I - I foreshadow - I can tell you what I'm up to - I foreshadow an adjournment of this hearing -

COMMISSIONER GOZZI: I mean, what you -

MR SWALLOW: - to allow - to allow the union to obtain some more information and give some more people into the field. That - that - that's my -

COMMISSIONER GOZZI: I mean -

MR SWALLOW: - that's my idea about if we're going to open the floodgates and we'll fair play for everybody, so everyone knows what the rules are. Because I've also been doing a little bit of investigating myself about different funds - and some comparisons and all this sort of stuff - and I've got information here, private and confidential - you see. So at the end of a period of time, sooner rather than later, I'll be

able to go out there and speak to the members at Bridgewater, Devonport or anywhere - anywhere in this state and advise them about all of these funds and all of their choices, and I'd hopefully - after I speak to them that they say to me, John, well look, we want to stop in one fund and it could be the historic super fund.

Because my position in all of this - in fact I'm in Tasplan too - but my position in all of this - and when I go back again to the initial - when it was first set up - it was because the Tasplan gave all employees in Tasmania the best deal. Right?

COMMISSIONER GOZZI: Mm.

MR SWALLOW: Now I've taken the role over the years, and this is why I've kept my sights on all of these things and I could see Tasplan was going down a bit and one going up a bit - and I put myself in the position where - where the union ought to and in fact will be the avenue to advise members as to which fund the union believes they should have their money.

COMMISSIONER GOZZI: Mm.

MR SWALLOW: That's what I consider my role, you see.

COMMISSIONER GOZZI: No, there's nothing wrong with that.

MR SWALLOW: I don't consider it's a role of any of these Johnny - Johnny-come-latelies going around and holding meetings of my members - right - because as it was said before it's nothing to do with the employer and I can explain to you why Legal & General went and spoke with the members, because early in the month Mr Flynn said to me, he said, John Jones wants to - I'm sorry - John Brown wants to go into direct super and so does Bridgewater Abattoirs want to go into super. I said, 'Well hang on a minute Mike' I said, 'You'd better go back and tell John Brown and the Bridgewater Abattoirs there's no good direct super going to them because it's not their money. It was their money, now it's the employees'. So you'd better go back and tell - tell John Brown and the Bridgewater Abattoirs that he's speaking to the wrong people. It's not the employers money - go and talk to the employees.' And of course hence this is why this meeting took place. Doesn't want to worry, because Mike give him the drum to get out there. So all I'm - all I'm suggesting to you is - and this is why the union position is a lot more involved in this - there's a lot more involved than just this. It's not a simple application.

And there's a lot going on, as I said earlier in the piece, as far as occupational superannuation goes and, indeed, superannuation. I think there are a few uppercuts coming there for the insurance industry, too, after this inquiry has been concluded.

And I believe there will be major developments in that area, and before we adopt any radical departure that could - I thought we was all about these days was award restructuring - to save administrative costs, and all of this sort of stuff; and of course to me at the moment that just seems to me to be the outcome will most certainly be an administrative nightmare.

And it was never intended for occupational superannuation to be that way, because if direct super is included and all of the other employees that I front up here go into the meetings of the superannuation fund or any other fund that's okayed by the government, of course the next step is that the laws ought to apply.

That's 3% and the 4% and the 5% goes on to every employee's wage. His actual wage.

Now what I am saying is if direct super is allowed in the union would request an amendment that it include the right percentages for every employee.

So, in other words, you haven't got your butcher's rate. If someone is earning \$200 a week he gets \$6.00 and someone earning \$1000 a week he gets the amount accordingly.

So it is a lot bigger item than what it looks on the surface. There are major developments going to occur, and are occurring, and from the union's position we'd seek an adjournment of this matter to allow more evidence to be obtained so then it could put us in a position where we could go and speak to our members and advise them as to what fund we believe they should be in, because it is their money.

COMMISSIONER GOZZI: Alright, thanks, Mr Swallow. A lot of the ground you have covered goes of course to the comment I made that a lot of the case or material that has been determined by the commission in respect of multiplicity of funds and that time of thing is really no longer relevant, given this particular piece of legislation.

But, notwithstanding that that legislation is now the law, and there is no impediment upon other funds being included in awards provided that they meet this criteria, and the only obligation the commission has is to satisfy itself in respect of that particular criteria - i.e. that it is a complying fund and, secondly, that it meets the wishes of employees.

Now I can understand some of the comments you are making about choices by employees, and you are quite right, those choices - having regard to my observations and I think supported by the submissions of Mr Edwards, those choices are only limited by the extent of the choice that individual employees want to exercise.

If an employee wants to be in a particular complying fund and another one in another particular complying fund I don't see that this legislation prevents that from happening.

And so I suppose from one point of view the competition that that might generate could all be to the well and good of the individual concerned.

But certainly from a cost point of view, having regard to what we said earlier, somebody has to make the resources available to do that administrative work.

But that's not what this hearing is really about, in any respect. The hearing is simply about to determine whether or not Legal and General can satisfy the requirements of the legislation.

Mr Flynn, do you want to respond to any comments made by Mr Swallow?

MR FLYNN: Commissioner, no, I think we have placed on record our position.

In the case of Legal & General, as I understand it you now require further evidence on whether they are a complying fund or not for direct super, is that correct?

COMMISSIONER GOZZI: Yes, and I have indicated I am prepared to accept a letter - rather than a reconvening of this hearing.

Now I have got to deal with Mr Swallow's request for an adjournment in a moment, but I am prepared to accept a letter indicating that that is the case from the Insurance Commission.

And in the past when a fund hasn't been registered or dealt with, processed fully by the ISC, they have notified the commission and the parties have been able to come up with a letter to say, look, it hasn't been registered yet but from our perusal it meets the requirements, and has been given interim endorsement by the ISC.

Now it is that sort of evidence that I would need, because obviously as Mr Taylor said in evidence, there are six other sub-funds of this particular fund and I don't think it is good enough in this type of proceedings to simply allude to the

fact that the ISC have recognised those other six sub-funds as complying funds.

They may or may not have, but until such time as that is properly established in some sort of documentary way it gives me a problem.

MR FLYNN: Going to the second part, commissioner, - that's clear - to the second part, being the insertion of the Legal & General direct super into the award in that the clauses we suggested with a caveat for Bridgewater and Devonport that if employees wish to go with another scheme that is acceptable.

COMMISSIONER GOZZI: Well, that's the determination I am going to have to make in a moment. I mean, obviously having regard to all that's been said, I would feel a lot more comfortable by having that choice available and maintain that choice for employees that don't want to go to Legal & General.

And so obviously the wording in the award would have to allow those employees that want to stay with Tasplan to remain in their, and for those that want to go to Legal & General for that to happen as well.

And, subsequently as Mr Swallow rightly points out, there might be other applications to vary the award in respect of other schemes.

MR SWALLOW: Yes.

COMMISSIONER GOZZI: And there is nothing that the commission can do about it except satisfy itself in respect of these particular tests.

MR FLYNN: Fine. Well, commissioner, if I can just state on record again that we are more than happy to place that choice between the Tasplan and the Legal & General direct super in the award, as per the words that we will come up with in due course. We have no difficulty with that.

However, with further applications, and I am saying directly to that, because I am talking about in this case in my terms two cheques a month. I am not sure that I am going to be going down the same path on another application where there might be as many as 5,10,15 or 20 schemes all applying at the one firm, and I might not be in a position necessarily to agree with it.

COMMISSIONER GOZZI: Well, you and Mr Edwards may have to have a talk about that.

MR FLYNN: Yes.

COMMISSIONER GOZZI: I very much agree with the point of view that I put, and which Mr Edwards discussed as well. I think the legislation provides no impediment to the number of schemes. What it does do is put an obligation on the commission to endorse appropriate schemes approved schemes, and for the commission to make sure that employees want to be involved in that scheme, and if that's done, that's it.

And there is no limitation as far as I can in respect of any number of funds in respect of employees.

That's why I made the comment, and I reiterate it now, that a lot of the case law that has been built up with respect to superannuation funds going into awards in the first place is now redundant; and, hence my comment, that in that context the wage fixing principles also are redundant; and, further, that the whole process of award superannuation seems to be - if I wasn't sitting here on the bench I would be more descriptive - a waste of time.

MR EDWARDS: Can we have the confidential version of that later?

COMMISSIONER GOZZI: You certainly can.

MR FLYNN: Okay, commissioner. My point is that I just don't want to be taken as setting some precedent for the rest of the industry in agreeing to that choice.

I mean, as I understand it, this argument hasn't been run before this commission before, and I certainly don't want to set any precedent here. This is purely for the sake of Bridgewater and Devonport Abattoir employees.

COMMISSIONER GOZZI: Look, you can build that fence around it. Obviously that's your prerogative. A decision on the issue will certainly issue. I'll be making some observations in that, but I don't see any impediment which would support your position. But I understand what you are saying.

MR FLYNN: Okay.

COMMISSIONER GOZZI: Just before we conclude and we have some discussions on the superannuation contributions part of it.

Exhibit MATFA.7 applies equally - well, is reflective of the employees at Bridgewater and Devonport?

MR FLYNN: That's correct, sir.

COMMISSIONER GOZZI: Now I quizzed Mr Taulor in respect of Bridgewater. Does it reflect the wishes of every employee at Devonport?

MR FLYNN: Yes, commissioner, I can advise that.

COMMISSIONER GOZZI: So everybody here - there is nobody on leave or sick or -?

MR FLYNN: I think that the Devonport matter has been over a number of months, whereas perhaps the Bridgewater matter has been a little bit shorter lee time than that, commissioner,.

COMMISSIONER GOZZI: Alright. Well, what I would ask - well, before getting to that point - obviously there are some discussions to take place between the parties with regard to how the arrears should be processed, but with regard to the proposal to include Legal & General direct super, I intend to go along with that, Mr Swallow - I don't seem to have any option.

I heard and listened very carefully to what you said. Obviously from where I sit I don't see any impediment to any number of funds applying in respect of a particular employer.

That may be subject to further argument later on, but from where I sit now I don't see any limitations at all.

I don't propose to grant an adjournment on that issue. I think it is clear cut from where I sit.

I'll endorse it, subject to getting the confirmation from the IS that it is a complying fund, and subject to a draft award variation being put forward by you, Mr Flynn, in consultation with Mr Edwards and Mr Swallow, to give effect to what you want to do in the superannuation clause.

The remaining clauses I will deal with, but also obviously we will need to come back in a moment or so to deal with the area of contributions retrospectivity, and I'll adjourn you into conference for that purpose.

ADJOURNED INTO CONFERENCE

COMMISSIONER GOZZI: Mr Flynn, can you offer me some suggestions?

MR FLYNN: Yes, commissioner. I can report that we have reached agreement with the AMIEU, and that those operative dates of 24th of May and - I can't think of the other one in August, commissioner - will apply and we'll be backdating the contributions accordingly.

COMMISSIONER GOZZI: Alright, well I'll put a correcting order through to allow that to happen. And I think, Mr Flynn, you were saying that the \$11.10 should have gone to \$11.50?

MR FLYNN: Correct.

COMMISSIONER GOZZI: As from 24.5?

MR FLYNN: Correct, sir.

COMMISSIONER GOZZI: And the 11.50 to - 11.80 -

MR FLYNN: Correct, sir.

COMMISSIONER GOZZI: - from the date -

MR FLYNN: 30 August 1991, commissioner.

COMMISSIONER GOZZI: 30.8.91 - that was the 2.5%, and that was really the last one, wasn't it?

MR FLYNN: That's correct, sir.

COMMISSIONER GOZZI: And that's for both awards?

MR FLYNN: That's the case, sir. I have actually calculated, commissioner, that that means that we have as at the 30th of June this year - and as you know I am anxious to get a decision before the end of this financial year. There has been an under-contribution of some \$72.00 per full-time employee.

COMMISSIONER GOZZI: Right. Now, what do we do - so that takes it to the 30th of August - now what happens from 1.7.92? Don't we need a further variation for that?

MR FLYNN: No, commissioner, because we're at 3% at that stage, and that is where the occupational superannuation - sorry - the Superannuation Guarantee Administration Act takes over - and large employers who had a payroll of greater than \$1 million in the '91-92 year would automatically go to the 4% and 5% from 1st of January this year.

COMMISSIONER GOZZI: But shouldn't we show those amounts in the award?

MR FLYNN: Well, commissioner, I was alluding to that earlier with that table I produced, and I am happy to have them all in there, futuristically, but, you know, I understand that may provide some difficulty.

I've actually completed the calculations. They go right through to the 9% in the year 2002.

However, I recognise also Mr Swallow's probably about to say, 'What if the butchers wage increases', or whatever.

COMMISSIONER GOZZI: Well, you know, I wasn't thinking so much about prospectively, I was thinking more about catching up.

You see, that takes it up to the 30th of August '91, so the next change would be 1 July '92 for those that would be paying 4% to 31 December '92.

MR FLYNN: That's correct, sir.

COMMISSIONER GOZZI: And then the 5% from 1.1.93. I am really saying, shouldn't we be showing those amounts in the awards?

MR FLYNN: Well, commissioner, I guess I am reflecting back to what you said earlier about whether we really need to have all of this additional information - I am quite happy for it to go in there, I don't mind - but it seems to me that every financial year or 31st December, whenever those percentages change, we are going to be back here amending the award. It's up to you, commissioner.

MR CAMERON: Mr Commissioner, at the risk of breaking protocol in this hearing, as an employer may I add some information to this that is directly relevant to this?

COMMISSIONER GOZZI: Yes, certainly, Mr Cameron.

MR CAMERON: That information is that as from the dates that are set down for the percentage increases employers generally have an obligation to pay the actual monies connected with that by a date in August of this year.

Hence, there is some urgency and concern on the part of employers to have all matters clear and resolved.

In any case, where employers are in any way prudent, they would have been accruing in terms of the superannuation guarantee legislation from the date of July '92 and from the January date in '93 and will have those funds set aside within their books ready to pay; or in the case of some smaller employers I would suggest, Mr Commissioner, would have already paid at whatever rates they are required to under the scale that applies to employers under a million.

Now I believe, therefore, that there is no need for there to be - there is an act which has a requirement, and employers generally have been accruing against that liability.

I am sorry to intervene in that way, but it might be useful information for you.

COMMISSIONER GOZZI: Yes. Thank you, Mr Cameron. So, in effect you are saying that because of the legislative requirement that employers will know that, and not to worry about putting it into the award?

MR CAMERON: Yes, Mr Commissioner.

COMMISSIONER GOZZI: Alright. Mr Flynn, will you do a draft order?

MR FLYNN: Yes, commissioner.

COMMISSIONER GOZZI: Right. Anything further, anyone?

Well, in the circumstances the award will be varied in the manner requested, subject to the information being received.

Now, Mr Flynn, do you anticipate any difficulty? Have you had a chance to talk to Mr Taylor about how he proposes to get that information that I require?

MR FLYNN: The certificate you are talking about, commissioner, starting at the bottom? He was off to do it virtually straight away, commissioner. I imagine you will have it - if it is available today by fax then I think you will have it today by fax, but I will certainly accelerate him to get that information here to you.

COMMISSIONER GOZZI: Okay. Alright, well then the decision and order will issue in due course.

These proceedings are concluded.

HEARING CONCLUDED