

COMMISSIONER IMLACH: I'll take appearances.

MR D. MATSON: Commissioner, my name is DENIS MATSON and I appear with **COLIN YOUNG** for the CEPU.

COMMISSIONER IMLACH: Thank you, Mr Matson.

5 **MR A. COWIE:** Commissioner, I'm ADRIAN COWIE. I'm here on behalf of the members of the Master Plumbers Association of Tasmania.

COMMISSIONER IMLACH: Thank you, Mr Cowie.

10 **MR R. BROWN:** If the commission pleases, RICHARD BROWN, on behalf of the TCCI.

COMMISSIONER IMLACH: Thank you, Mr Brown. Now, have the parties had discussion on this matter, Mr Matson?

15 MR MATSON: Commissioner, we have had some brief discussions. We've circulated a copy of the application and of the draft order and through Mr Young, have had discussions with all of the employers - employer associations affected.

COMMISSIONER IMLACH: And what's the reaction?

20 MR MATSON: Commissioner, I understand that there is a reservation on the question of the named funds, not so much to the extent of inserting C+BUSS but as to whether other funds ought to be inserted into the list of known funds.

COMMISSIONER IMLACH: Yes. We'll just go off the record for a minute, thanks.

OFF THE RECORD

25 COMMISSIONER IMLACH: Thanks for those discussions, gentlemen. They've been helpful to me. I hope they have been to you, to some extent. I'll refer the parties into private discussions, along the lines that we discussed off the record. I would urge the employers to be positive and react positively to the simple matters that will be put to
30 you but if there are matters that you feel, in-principle, you need time to investigate, I say to the union that I'd be inclined to agree to that application but I'll hear what the parties say when I return. This matter is adjourned until half past eleven.

ADJOURNED INTO CONFERENCE

35 COMMISSIONER IMLACH: Who's to report?

MR MATSON: Commissioner, I'll do that and if I could thank the commission for the opportunity to adjourn and have some discussions.

5 We've reached an agreement on how to proceed and that is, that we'll ask the commission to relist this matter in approximately two weeks' time, that we will tender a new draft order which will be exactly in the same terms as that provided in the application, except in relation to clause 39(i) subclause (1) which specifies the list of funds.

The union will agree to the inclusion of any legitimate industry fund and the employers will provide evidence to satisfy the commission, as required under section 32(1B) of the act and we will run our submission now as to why the application should be granted.

10 Perhaps, before I do that, the employers may wish to add to my summation of our agreement on process. If the commission pleases.

MR BROWN: Yes, commissioner, we do support the process as outlined by Mr Matson on the basis that we do need to proceed to update the award and replace the out of date provisions that are currently within it and in doing that, notwithstanding the fact that we still need to have regard for the simplification and reducing any possible duplication of federal legislation et cetera and also taking into account the possible amendments to that legislation. We feel that that can be done through the award review process, if appropriate at that time. If the commission pleases.

COMMISSIONER IMLACH: Yes. Thanks, Mr Brown. Have you got anything to say, Mr Cowie?

MR COWIE: Thank you, commissioner. We, in our preliminary discussions, commissioner, identified that the application in fact duplicates for all intents and purposes the federal award and I happen to have a copy of part of the award with me and I'd like, if I may, present you with a copy of that section of the award also, commissioner.

COMMISSIONER IMLACH: Call that C.1. Yes, Mr Cowie?

MR COWIE: We did raise the necessity of freedom of choice as been identified in Taxation Laws Amendment Bill No. 7, which was introduced to the House of Representatives on the 4th December 1997, the need for freedom of choice with respect to superannuation and for that reason we do support the application that it is extended to make and take account of other superannuation funds.

We also, commissioner, wish to emphasise at this stage that in this period of two weeks we will explore further the opportunity to include funds which may not be considered to be industry funds. We believe that freedom of choice should extend further than a cartel or an embargo by employees or employers with regard to superannuation.

COMMISSIONER IMLACH: I thought cartels were restricted to employers, Mr Brown.

MR BROWN: I'm sorry, commissioner, you're probably precisely right in that regard.

Commissioner, in concluding I also make mention of subclause (2) - 39(d)(i)(2):

5 *Any fund agreed between the employer and eligible employees and the unions or unions.*

Mr Matson assures me that that needs a tripartite agreement before there's some acceptance of a superannuation fund. We don't believe the union should in fact have a right of veto in this regard. We believe
10 that with a transient work force people come into the industry and they bring forward superannuation and other funds and it may be that there's room for agreement between the employer and the employee without the need for an agreement by the union to continue to pay into an existing superannuation fund, which may in fact not be cited
15 in the award. Commissioner, that's all the other clauses and all the other detail in the application we support. Thank you, commissioner.

COMMISSIONER IMLACH: Thanks, Mr Cowie. Yes, Mr Matson?

MR MATSON: Commissioner, perhaps just before I start, if I could briefly - in relation to Mr Cowie's comments on the draft order 39(d)(2).
20 That matter, I am reasonably confident will be raised in all reviews of the award that are forthcoming, certainly in terms of award simplification.

Commissioner, this application pursuant to section 23 for the award variation re superannuation seeks to do five things really. One, is to
25 update the existing provisions of the award. The second is to bring it in line with existing superannuation guarantee legislation. Thirdly, to bring it in line with the parent award, being the Plumbing Trade Southern States Construction Agreement 1979 of the Australian Industrial Relations Commission; fourthly, to correct references in the
30 award and unintended implications of its application, if read literally and fifthly, to add the C+BUSS superannuation scheme as the major industry scheme to the list of named schemes and obviously as a consequence of our agreement on process, such other industry schemes as may be brought back before the commission when this
35 matter is relisted.

The application removes dollar amounts from the existing award clause and replaces them with references to the percentages set by superannuation guarantee legislation. The existing clause was the
40 result of winning superannuation in the plumbing industry prior to its becoming an entitlement for most workers under that legislation and the clause in the existing award is therefore badly out of date and contrary to legislated minimum standards and full of obsolete references.

5 The clause in the federal parent award has been kept up to date. It was varied to remove the three per cent contribution rate and substitute that with the superannuation guarantee legislation prescribed percentages. It was also the subject of an application to insert the best scheme which was referred to a full bench which then became the vehicle for the Australian Industrial Relations Commission's test case on superannuation in September 1994.

10 So, without going into detail, the current clause has been tested against all existing legislation, the principles of the Australian Industrial Relations Commission and those set by the full bench of the high court in the financial clinics case.

15 In relation to the proper numbering and references, the award as it stands, is divided into Division A and Division B. Division A stands alone. Division B, applying to weekly hire employees, calls up numerous provisions of Division A and because the current superannuation clause is in Division B of the award, if read literally it might not apply to Division A employees. So, if I could refer to the draft order that was attached to the application.

20 Sections 1 and 2 of that draft order make provisions to delete the references to the existing clause and effectively move the clause on superannuation into Division A and then insert a reference to that clause in Division B, consistent with the way that that has been handled in reference to other provisions of the award.

25 In relation to the choice of fund, section 32(1B) of the Industrial Relations Act 1984 requires the commission to vary the award on two provisos. Firstly, that the scheme is a complying scheme and the definition of a complying scheme is contained at section 32(1D) of the act which refers to the requirements under the Superannuation Industry Supervision Act 1993. That act no longer requires the former certification which is cited by the Tasmanian Industrial Relations Act 1984. The requirements under that Superannuation Industry Supervision Act now refer to an auditor's certification and perhaps I could provide the commission with a copy of that certification in respect of the C+BUSS scheme.

35 COMMISSIONER IMLACH: Does it refer to that name in here, does it?

40 MR MATSON: The name is in full, commissioner, and is the Construction and Building Unions Superannuation, which is the proper name of the scheme and that is referred to in the first paragraph of the auditor's report.

COMMISSIONER IMLACH: So that's colloquially called, C+BUSS?

MR MATSON: That's correct, commissioner.

COMMISSIONER IMLACH: You've got to understand, we outsiders don't know these secrets, Mr Matson. Right?

MR MATSON: Commissioner, unfortunately our industry, like many others, is full of jargon. Could I ask the commission - perhaps it's
5 appropriate to mark that as an exhibit?

COMMISSIONER IMLACH: Yes. Thanks for reminding me, Mr Matson. M.1.

MR MATSON: So, commissioner, we would say that exhibit M.1 satisfies the requirements of the first subsection of 32(1D) of the
10 Industrial Relations Act 1984 and in respect of the second proviso:

The commission must be satisfied that the scheme meets the wishes of employees.

The statistics that we say supports that are, that in Australia the C+BUSS scheme now has a total of 286,691 members. It has a total
15 number of employers of 18,533. Of those, the number of members in Tasmania is now 6,266 and the number of employers in Tasmania, 341, of which plumbing employers represent approximately 29. The total members' assets and reserves is in the order of 1.8 billion dollars and we say that that is clear evidence that the scheme meets the
20 wishes of employees.

So we say that the commission should be satisfied on both counts as provided under section 32(1B) of the act and should therefore make that variation. In discussions with the employers, the issue of
25 impending legislation of choice of fund has been raised and in that regard we say three things.

Firstly, that the bill has been referred to a senate standing committee and that committee is not due to report until the 14th May this year and given the recent track record of senate standing committees and the passage of legislation after that process, it may well be years before
30 anything of consequence is proclaimed and then, even if it is, we are at this stage clearly not sure what the form of that legislation will be.

Secondly, we say that the existing award clause is hopelessly out of date and it would be remiss of the parties and of the commission to continue to allow that situation to go on.

35 Thirdly, that the commission is in any case bound by section 32(1B) to make the variation, if it's satisfied, on the two grounds that I've already addressed.

So, in short, commissioner, we'd say that the application ensures the relevance of the award provision, that it is consistent with the parent
40 award and the super legislation, that it corrects an unintended consequence of a placement of the existing clause in Division B of the

award and inserts the major industry scheme, consistent with the provisions of section 32(1B) and that we will provide the commission with a revised draft order consistent with the undertaking that we've already given and seek the commission to relist this matter in a couple
5 of weeks, in order that we can finalise the matter.

COMMISSIONER IMLACH: Yes. Thanks, Mr Matson. Now, have you got anything more to say?

MR BROWN: No, commissioner.

COMMISSIONER IMLACH: Yes, thanks, Mr Brown. Mr Cowie, no
10 more?

MR COWIE: No, thank you, commissioner.

COMMISSIONER IMLACH: Thank you. We'll just go off the record for a minute, thanks.

OFF THE RECORD

COMMISSIONER IMLACH: Thanks for that, gentlemen. Now, before
15 we get to the practical details, what about the operative date, Mr Matson?

MR MATSON: Commissioner, our submission is that the operative date should be today's date.

COMMISSIONER IMLACH: What do you say about that, Mr Brown?
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MR BROWN: I've no problem with that, Mr Commissioner.

COMMISSIONER IMLACH: Mr Cowie?

MR COWIE: I believe, commissioner, that the date should be the date upon which it's finalised, being perhaps the 18th.

COMMISSIONER IMLACH: Well, as there is a bit of disagreement, I'll
25 leave that with you, Mr Matson. If it's not agreed by the 18th, it shall be the 18th.

MR MATSON: Certainly, commissioner. There's no problem.

COMMISSIONER IMLACH: If you can get agreement for the 3rd in
30 between times, it'll be the 3rd. These employers, they never change, do they.

MR COWIE: Well, commissioner, just to expand on that, if I may, it is possible that somebody in the workplace could in fact be working in contravention of the award at the moment, if it was held to be
35 operative from an earlier date. I do understand there are people paying into other superannuation funds at the moment.

COMMISSIONER IMLACH: Yes. Don't get me wrong, Mr Cowie, that's your role and I don't say that it's a wrong role. I understand how Mr Matson must feel but in this case I'm kicking with you, shall we say.

5 MR COWIE: Well, thanks very much, commissioner. I just didn't want to appear to be difficult, that's all.

COMMISSIONER IMLACH: No, that's all right. I've been in Mr Matson's position, that's all. It's more humour than indicating what I am going to do about it.

10 All right. Thank you, gentlemen. I congratulate the parties on reaching that settlement. I note too that the chamber has indicated it will be reviewing the situation when the award review comes up. I must say that I myself wouldn't have - I have very little idea as to what the federal law proscribes, so that I would hope that the employers do take up their responsibilities in this matter, meaning that we all know that
15 awards should be as simple as possible and this draft, as far as I can see, even though it may well be necessary, Mr Matson, is not simple, is it?

20 So, I just make that point but I'm quite happy at this stage to implement the amendment as agreed by the parties so that if I receive a draft order in the intervening period, this matter will not be brought on again. I'll just proceed with an order but if the parties are unable to reach a complete settlement, this matter will be set down for hearing on Wednesday 18th February at which time I'll hear the parties and then make a decision. Nothing else?

25 MR COWIE: Was there a time on the 18th, commissioner?

COMMISSIONER IMLACH: It'll be 10.30, Mr Cowie.

MR COWIE: Thank you.

COMMISSIONER IMLACH: Thank you.

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