

PRESIDENT: Appearance please.

MISS J. THOMAS: Good afternoon Mr President, JENNY THOMAS, appearing with me MRS NORMA CALDER for the Tasmanian Chamber of Commerce and Industry, if it pleases.

5 PRESIDENT: Yes, thank you Miss Thomas. I note that there is no appearance from the main employee organisation party to the award.

MISS THOMAS: Yes, they have corresponded with us directly so I'll let you have a copy of that letter shortly.

PRESIDENT: Yes, good.

10 MISS THOMAS: I believe I have to make an amendment to my application. I request that I vary clause 36(d), whereas is fact the reference should be 37(d).

PRESIDENT: That's why I couldn't find it.

MISS THOMAS: That's right.

15 PRESIDENT: Yes, I'll just check that, yes, all right. Your application will be amended accordingly.

MISS THOMAS: Yes, thank you. The application seeks to vary clause 37(d) by adding a further proviso that will allow the royal Australian Institute of Architects Tasmanian Chapter to contribute
20 superannuation contributions into either Tasplan the existing award nominated fund, or the National Mutual Tailored Super Fund.

The application, in effect, only affects one employee. The institute has two employees in Hobart, one employee - and her name is - Sandra Speakman, she's a part-time employee, she has indicated she wishes
25 her contributions to be made into Tasplan, whereas with Mrs Calder, she has indicated her wish to have contributions made into National Mutual Tailored Super. This arrangement has, in fact, been in place since 1 July last year, or thereabouts. It was made in accordance with a national arrangement regarding superannuation for the institute,
30 and I guess the institute imagined that the exemption process would be a fairly simple one, but it has in fact been quite a lengthy one. So we find ourselves here today seeking the exemption for, in effect, Mrs Calder. Now the Act states that the -

PRESIDENT: What turned it into such a long process?

35 MISS THOMAS: Documentation mainly, I put it down to, yes - extrania correspondence between the parties, and mainly going to documentation.

PRESIDENT: Yes, all right.

MISS THOMAS: Which has just prompted me to have a look at something else here. Okay, so in accordance with section 32(1)(b) of the Act, the commission needs to be satisfied that the proposed fund is a fund which meets the wishes of the employees, and that the fund is
5 a complying superannuation fund. Now I have brought Mrs Calder along to demonstrate to the commission that the National Mutual Tailored Fund is a fund that does in fact meet Mrs Calder's wishes.

I don't know how we should go about dealing with that matter, I mean we can obviously get Mrs Calder to state that, yes, this is an
10 arrangement that I agree to, or you could ask Mrs Calder any questions you may have, Mr President.

PRESIDENT: Yes, well look, you're representing the employer in this matter, which is the Institute or the Tasmanian Chapter of the Institute I take it, and you're seeking to vary the award by adding the
15 proviso that you've suggested, now do you have evidence of the fact that there are only two employees of the chapter?

MISS THOMAS: I do, in fact, have that evidence. We initially went through the employee acceptance procedure, the form that the commission normally is used to, and I do have a statutory declaration
20 to that effect. This is completed by Allan Ewart, who is a company secretary, who makes a statement that both Norma Calder and Sandra Speakman are employed under the clerical award, and I can hand that up.

PRESIDENT: Can you hand that up as a exhibit, is that for the
25 commission's files?

MISS THOMAS: Yes I can, yes.

PRESIDENT: Good, thank you. And what's the status of Mr Ewart in respect of the Tasmanian Chapter of the Institute?

MISS THOMAS: Maybe Mrs Calder could answer that question?

30 MRS CALDER: Well, we're one organisation, Neil Ewart is the company secretary.

PRESIDENT: Of?

MRS CALDER: The Royal Australian Institute of Architects.

PRESIDENT: Which encompasses the Tasmanian Chapter?

35 MRS CALDER: Yes.

PRESIDENT: Yes, all right. Good, I'll mark that document **TCCI.1.**, Miss Thomas. So we know that there are two employees. I don't think you need go in the witness box Mrs Calder to swear that you are the person named in this document, I suspect you are, and for that

reason, I'll just simply ask you questions from the bench that you've been made aware of the terms and conditions of the fund into which you want to have your contributions paid.

5 MRS CALDER: That is the fund that I have my other superannuation in, and I actually wrote a letter requesting that this be done, in line with other states.

PRESIDENT: Right, has the employer given you a copy of that letter, Miss Thomas?

MISS THOMAS: I don't think so.

10 PRESIDENT: Would you have a spare copy, Mrs Calder?

MRS CALDER: I have a copy, it's not a spare but it's not a problem.

PRESIDENT: We can arrange to get a copy taken of it and that would suffice. Could I have a look at it, please? Yes, that's fine. If I can have a copy of that for the file, we'll arrange that later. Okay.

15 MISS THOMAS: Mark that exhibit **TCCI. 2?**

PRESIDENT: Yes, that'd be appropriate. That's all I really need, in so far as information in respect of Mrs Calder's wishes.

20 MISS THOMAS: Thank you. In terms of the other section of the Act, I've been madly flicking through the file to find that standard letter of approval from the ISC and it doesn't appear on this file, for some reason, that's not in amongst your documentation is it?

MRS CALDER: ..[inaudible]..

MISS THOMAS: ISC letter. National Mutual Tailored Super is a fund that we see regularly up here, I can arrange for that this afternoon.

25 PRESIDENT: Yes, I'm aware of the fund, it is an approved fund.

MISS THOMAS: If you're happy with that.

PRESIDENT: Yes, yes if you could just, can you get that and provide just for the files?

30 MISS THOMAS: I can get, yes, I'll get something from National Mutual, that's not a problem.

PRESIDENT: No, I'm prepared to accept that.

35 MISS THOMAS: Thank you. Okay, in terms of consultation with other parties who have an interest in the award, I did do that. I wrote to Mr Paterson some weeks ago. Mr Paterson returned a letter to me on 11 June, and I can hand this up as an exhibit. He refers to my

5 correspondence of 15 May, and he goes on to say that the union consents to the award variation sought, on the understanding that: 1) the employee concerned has been provided with all relevant information on the respective funds, 2) the employee's decision to have contributions paid into the alternate fund was free of duress or coercion, and 3) the alternate fund complies with the requirements of the *Superannuation Guarantee Act*.

10 In relation to that first point, that refers to the employee concerned being provided with all relevant information, Mrs Calder did have in her possession those standard A4 summary sheets on Tasplan and National Mutual.

PRESIDENT: Yes, right thank you. We'll mark that document **TCCI.3**.

15 MISS THOMAS: The final matter to be addressed today is that of operative date. We are in fact seeking retrospective operation of this application, or of this variation to the award. According to section 37(5) of the *Industrial Relations Act*, the commission may grant retrospectivity, if in the opinion of the commission, there are special circumstances that make it fair and right to do so. In this situation we would claim that there are special circumstances. The Institute has made a superannuation contribution on behalf of Mrs Calder into an approved fund since 1 July last year, in accordance with national arrangements, and at the request of Mrs Calder. The Institute has for some time been seeking this variation, and thought it would be a relatively simple process, however that hasn't been the case. However, during this time, due to no fault of the employee, Tasplan has continued to charge fees for Mrs Calder, which has been at Mrs Calder's expense. A retrospective date of operation to the 1 July last year would be -

20
30 PRESIDENT: And no money's paid in to Tasplan?

MISS THOMAS: No, but they're still deducting fees. The retrospective date of operation will give validity to the employee's choice of fund, and may assist the employee in the recovery of any losses she has personally sustained over the past 12 months. If it pleases the commission.

PRESIDENT: Now I take it that the ASU was aware of the retrospective nature of the application?

MISS THOMAS: No, they weren't aware of that.

PRESIDENT: Weren't they?

40 MISS THOMAS: No.

PRESIDENT: I think we can get around that. Okay, well thank you for those submissions. You're satisfied that the proviso in draft form that you've tendered is sufficient for the purposes of the award variation?

5 MISS THOMAS: Yes. It's very similar to the existing proviso, or the one that appears before it, and I simply chose similar words.

PRESIDENT: Yes

MISS THOMAS: Where it gives Alliance Tasmania, a choice between Tasplan or the market leaders fund, so I just picked up those words
10 there.

PRESIDENT: I just wonder whether we need to put in the proviso what the operative date is, rather than have it attached to the order, relying solely on the order?

MISS THOMAS: Yes.

15 PRESIDENT: I think it might be better written into that proviso.

MISS THOMAS: I think that could be accommodated by inserting, after 'provided further', the words 'from 1 July 1996'.

PRESIDENT: Is that first full pay period thereafter, do you know?

MISS THOMAS: It would be linked to pays, wouldn't it?

20 MRS CALDER: What I've got here is, termination date of Tasplan would be 19 July 1996, ..[inaudible]..

MISS THOMAS: Probably first full pay period I reckon, yes.

PRESIDENT: On or after?

MISS THOMAS: 1 July.

25 PRESIDENT: 1 July, sure?

MISS THOMAS: Yes.

PRESIDENT: What's relevant to 19 July?

MISS THOMAS: It's just that contributions to Tasplan were terminated on 19 July.

30 MRS CALDER: It was for the period 22 - sorry am I allowed to talk?

PRESIDENT: Yes. we'll go off the record for a moment please.

OFF RECORD NO FURTHER PROCEEDINGS RECORDED