

HEARING COMMENCED 10.30am

COMMISSIONER: I'll take appearances please.

5 **MR J. O'NEILL:** Yes. If it pleases the commission, O'NEILL J., appearing for Peter Cole Family Trust trading as Waratah Wholesale. If it pleases.

COMMISSIONER: Thank you.

MR I. PATERSON: If the commission pleases, IAN PATERSON, appearing for the Australian Municipal, Administrative, Clerical and Services Union.

10 COMMISSIONER: Thank you. Mr O'Neill, we were together on one other occasion some time ago to look at this question and I've received a note from you saying that you want the matter reconvened.

MR O'NEILL: Yes, that's correct. Yes.

COMMISSIONER: Right. Well you can take me to it.

15 MR O'NEILL: Thank you. Sir, this is an application pursuant to section 23 of the Act in respect of a superannuation exemption for Peter Cole Family Trust trading as Waratah Wholesale for their employees, which there are four of, to contribute to the SMF Fund as opposed to the two award base funds.

20 This application did come to the commission quite some time ago and on behalf of our client we do apologise for the delay in finalising this matter. However, as I indicated to the commission, previously, there were some concerns in respect of the process and it was important that the process in respect of employees being given the opportunity to
25 hear from the other funds and that needed to occur. In the first instance, sir, that in fact hadn't occurred but I'm pleased to be able to advise you this morning that has now occurred. In a letter to you to the commission dated 13 July of this year I indicated that to you and requested that this matter be bought back on for hearing this
30 morning.

COMMISSIONER: Right. Can you want to take me to -

MR O'NEILL: Yes, I'll take you to the relevant documentation.

COMMISSIONER: Yes. Thank you.

35 MR O'NEILL: Form 1 is the Employees Acceptance. This form simply indicates that the undersigned employees of Peter Cole Family Trust trading as Waratah Wholesale who are covered by the Wholesale

5 Trades Award have signed this form individually. The form details which fund that the employees wish their employer superannuation contributions to be made. The employees have heard from Tasplan and LUCRF and the proposed fund which is the Tasmanian Chamber of Commerce and Industry Super Fund.

COMMISSIONER: And when you say they have heard from them, are you referring to documentation that was forwarded to them?

MR O'NEILL: No -

COMMISSIONER: Or have they -

10 MR O'NEILL: - that happened originally, sir.

COMMISSIONER: Yes.

15 MR O'NEILL: What happened since then is that on the 23 and 24 February respectively, the employees received presentations from the two award based funds - actual presentations at the workplace - and those presentations included return on investment administration charges, the death and disability coverage and the roll-over provisions.

20 So on that basis following that employees made their declarations that you can see there. Their acceptance is in Form 1. Over the page there's the other two funds - you can see there are no signatures there - the employees state there was no duress and that they were given the opportunity to inform themselves on the other funds and have made their wish known to their employer and we now seek that the commission grant this exemption in respect of our client.

25 COMMISSIONER: Good. Now just one question. The employer did make a declaration on the 28 October 1988, in the following terms:

All employees working at Peter Cole Family Trusts trading as Waratah Wholesale covered by the Wholesale Trades Award are detailed below and then they're got Johnson, Saltmarsh, Kingston, O'Neill.

MR O'NEILL: Yes.

30 COMMISSIONER: And I know in the Form 1, that you referred to, it's the same people have signed the Form 1.

MR O'NEILL: Yes.

COMMISSIONER: Is it true to say to this very day they're the only employees of Peter Cole Family Trust?

35 MR O'NEILL: Yes, that is correct. Yes.

COMMISSIONER: Right. And they've signified that they're happy to go to the new fund?

MR O'NEILL: Yes. Thank you.

COMMISSIONER: Mr Paterson?

5 MR PATERSON: I've no submissions to make on this matter. Thanks, commissioner.

COMMISSIONER: Right. Mr O'Neill, you may need to address me on the form of the order and the operative date. Have you any view?

10 MR O'NEILL: The operative date can simply be as of the commission's approval. If that's today that day will be acceptable as to the form of the order.

COMMISSIONER: So you're seeking to vary which clause in the award - I take it that it's clause 34?

MR O'NEILL: Yes. I must apologise, sir, I don't have the award.

15 COMMISSIONER: I think you've got a draft here that you were going to give me, aren't you?

MR O'NEILL: Thank you. Yes, sir, it's in fact clause 34, subclause (e) - Exemption and subclause (f) - Procedure for Seeking Exemption and the exemptions are listed under subclause (h).

20 COMMISSIONER: Right.

MR O'NEILL: Thank you.

COMMISSIONER: So you've got an exhibit there you wish to tender?

MR O'NEILL: Yes, thank you.

COMMISSIONER: We'll mark this **EXHIBIT TCCI 1**.

25 MR O'NEILL: Thank you.

COMMISSIONER: Right. Well I can indicate to the parties I'm going to vary the award in the manner sought and the operative date will be the first full pay period to commence on or after today.

30 I'll hand down a written decision and the order in due course. Thank you very much.

HEARING CONCLUDED 10.40am