

COMMISSIONER: I'll take appearances.

MS J. THOMAS: JENNY THOMAS of the Tasmanian Chamber of Commerce and Industry on behalf of Hills Sheet Metal Pty Ltd.

COMMISSIONER: Thanks, Ms Thomas.

5 **MR C. YOUNG:** COLIN YOUNG from the CEPU Plumbing Division.

COMMISSIONER: Thanks, Mr Young.

MR A. COWIE: ADRIAN COWIE from the Master Plumbers Association of Tasmania.

COMMISSIONER: Mr Cowie - thank you. Now Ms Thomas?

10 MS THOMAS: Thank you, Mr Commissioner. This is an application to vary clause 48 of the Plumbers Award to insert a superannuation exemption for Hills Sheet Metal Pty Ltd and also to delete provisions in the award which are no longer applicable given the recent amendments to the *Industrial Relations Act* as they relate to
15 superannuation.

Before I commence my submissions, I'd like to amend my application to include a further amendment which would be to delete the reference to subclause (e) in subclause (b) - employer contributions, paragraph (1).

20 COMMISSIONER: And (e) of this clause.

MS THOMAS: Yes. And (e) - that's right - so it would finish at subclause (d), full stop.

Now as I said, this application is primarily to insert Hills Sheet Metal Pty Ltd as an employer having an exemption under the award to
25 contribute into a superannuation fund other than Tasplan.

In that respect, I have an exhibit to hand up to the commission.

COMMISSIONER: **EXHIBIT T.1.**

MS THOMAS: Before approving this matter, Mr Commissioner, obviously you will need to have regard to section 32(1B) of the Act
30 which states as follows:

(1B) 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.

5 Now, if I take you through the exhibit, Mr Commissioner, the first document is a statutory declaration completed by Jillian Hill who is a director's secretary of Hill Sheet Metal Pty Ltd. In that statutory declaration she has identified the 11 employees employed under the Plumbers Award.

10 The second document is the employees acceptance form which the commission has seen before in other matters. That document commences with a statement, that employees have been presented with a summary of key information on each fund including return on investment, administration charges, death and disability coverage and rollover provisions which has allowed each employee to give an informed opinion without duress.

15 On page 2 of that acceptance form, each of the 11 employees employed under the Plumbers Award at Hill Sheet Metal have indicated that they wish their contributions to be made into the proposed fund, that is the Mercantile Mutual Life Employed Persons Superannuation Fund.

20 The next documents are the fund summary sheets that were provided to employees, one being on a Mercantile Mutual Life Superannuation, or Life Employed Persons Superannuation Fund and you'll note there that that details admin charges, members leaving funds, rolling over details, death and disability insurance and a summary of performance to 31 May 1996. I think there's some further information on the
25 second page there.

The second sheet is the Tasplan summary which details similar information up to the period that was available at the time this matter was put to the employees, that is to the year ended 1995.

30 In that respect, I would argue that those documents there indicate that the proposed fund is a fund which meets the wishes of the employees under the provisions of the *Industrial Relations Act*.

35 The next documents in the exhibit booklet are provided to you in order to satisfy you that the proposed fund, the Mercantile Mutual Life Employed Persons Superannuation Fund is a complying superannuation fund. Normally, we would provide the commission with documents from the ISC that state that either the fund is an approved fund or is a regulated fund but on this occasion that information hasn't been readily available despite a number of requests to the fund.

40 What we have been able to obtain is these documents. The first document headed, Mercantile Mutual, is a copy of a document completed by the manager of Mercantile Mutual Custodians Pty Ltd

and I only need refer you to the first paragraph of that letter, wherein it states:

5 *We confirm that Mercantile Mutual Custodians is the trustee of the Mercantile Mutual Life Employed Persons Superannuation Fund and the Mercantile Mutual Life Employed Sponsored Superannuation Funds made an irrevocable election to the Insurance and Superannuation Commission in June 1994 for both funds to become regulated funds under the Superannuation Industry Supervision Act 1993.*

10 The second document is a copy of a letter completed by Ernst & Young, chartered accountants, which I think is just put forward to you, Mr Commissioner, on the basis that it indicates in the last paragraph that on the completion of our audit, we were of the opinion that there were no material weaknesses in the system of internal control and that the records of the company could be relied upon for
15 the purpose of forming our audit opinion.

That is just to demonstrate that the fund is complying with relevant accounting requirements, procedures and controls required by the ISC.

20 The third document is just a page taken from the Automotive Industries Award, which is identified by the award code P005 on the footer of the document. You will note there, on the right-hand page, page 41, that the Mercantile Mutual Life Employed Sponsored Superannuation Fund is actually listed twice on that page as applying
25 to R.E & D.M. Mason, trading as Shell Triangle and Hayes Auto Electrics, so it is a fund that has been acknowledged as having an approved status before the commission previously.

In that regard, I'd submit that the provisions of section 32(1B) of the Act subparagraphs (a) and (b) have been satisfied.

30 The application therefore seeks to delete the existing subclauses 48(d) and (e) and insert the new subclause (d) as follows, subclause (d) - Exemption. Now, the existing wording, I have removed because it is no longer in accordance with the *Industrial Relations Act* and under section 42 of the *Industrial Relations Act*:

35 *An award has effect subject to the provisions of any Act dealing with the same subject-matter.*

Obviously, these provisions in the award have been in place for some time. The Act has been subsequently amended to allow for exemptions to be granted under section 32(1B) so those provisions as detailed in
40 subclause (d) and (e) no longer sit comfortably within the requirements of section 32(1B) of the *Industrial Relations Act*.

5 I have sought to delete those two subclauses, replacing them with a simple exemption clause which will just list the employers and the alternate funds which have been approved by the commission. That amendment will obviously require some renumbering. Existing subclauses (f) and (g) will now become (e) and (f).

Finally, you should have a copy of two letters, addressed to the unions that are party to the award.

COMMISSIONER: Not in the exhibit, Ms Thomas. I haven't got them, no.

10 **EXHIBITS T.2 and T.3.** The TCCI headed one, T.2 and the 14 January 1997, T.3.

15 MS THOMAS: Exhibit T.2 is a letter addressed to the secretary of the CEPU as we know it, in relation to this matter. Until Mr Young's appearance today, I hadn't received a response from the union in relation to that correspondence. It is put forward merely to demonstrate that the normal consultative processes have occurred. Subsequent to that, a couple of days ago I realised that the metal workers hadn't been consulted about the matter, they being parties to the award, so I sent off a hurried letter to them by fax on the 14th
20 apologising for my oversight but asking for their comments on the application.

Mr Harding of that organisation called yesterday and I can report that it was an interesting conversation but he indicated he wasn't going to appear today.

25 If it pleases the commission, I would ask that the award be varied operative from the first full pay period to commence on or after today's date.

30 COMMISSIONER: Yes. Just one point, Ms Thomas. You may have canvassed it but this business of the commonwealth requirements, from what you've said and reading the letter there of the Mercantile Mutual to the local Hobart office, that the Mercantile Mutual Life Employer Sponsored Superannuation Funds made an irrevocable election to the commission. Is that a key element of this?

35 MS THOMAS: Yes, it is. Once they make that election, it is irrevocable. What that means is, that the fund doesn't have to go through the normal reporting requirements as has been required in the past. Apparently, every year, the funds were required to submit their accounts and financial records and the ISC issued that letter of approval which we had become familiar with here at the commission
40 but under the *Supervision Act 1993*, a fund is given the option of making that irrevocable election and from then on compliance is assumed, unless some major problem is identified and the ISC has to investigate the operations of the fund.

It is, in effect, I guess, equivalent to what we know as an approved fund, a regulated fund - has the same status as an approved fund. Our Act, I guess, to some extent is out of step with modern developments with the legislation in this area.

5 COMMISSIONER: Yes. It would be advantageous, would it not, to have some evidence from the ISC about that?

MS THOMAS: Yes, it would be and normally we can obtain that and for some reason, Mercantile Mutual, couldn't put their hands on that ISC letter. I have become aware though, from people at Tasplan, that
10 they couldn't find their letter and were able to obtain a copy of it from the ISC but it can take some time but I can get a copy of that letter.

COMMISSIONER: Yes. Well, if you're able to, Ms Thomas, in due course, I'd appreciate a copy.

MS THOMAS: Yes. I'll send a letter off to them and see if they can get
15 one.

COMMISSIONER: I'm not making a big thing about it but I think it would make us all feel more secure about the whole business, would it not?

MS THOMAS: Definitely.

20 COMMISSIONER: Thanks, Ms Thomas.

MS THOMAS: If it pleases.

COMMISSIONER: Mr Young?

MR YOUNG: Mr Commissioner, mainly the people at Hills - very few
25 of them are actually union members. Just to answer Ms Thomas' question about the information that she sent to me. I actually didn't receive it. That's not TCCI's fault by the way, that's within our own organisation, because there are dual secretaries in Tasmania, the information went to the wrong secretary, so I apologise for not contacting Jenny over that matter but that's the reason why.

30 So the situation as I see it, is under the current state award, there is provision for complying funds to put people into different superannuations anyway. The necessity for actually varying the award, I question. Also, traditionally, the union supports industry fund and Tasplan being an industry fund, that would be a matter of
35 record that my union would continue to support Tasplan.

Obviously, by removing them from awards, I understand that it will happen more and more but obviously I would still try and defend any industry funds. I believe that the industry funds actually are a better return to the individual. I'm in an industry fund, myself, and its

performance has usually out-performed most of the life companies and Tasplan really should have been here to defend their rights as well but obviously they're not party to the award so they can't be heard.

5 I do oppose the submission by the TCCI and obviously I would like to defer the matter for further investigation with the actual individuals at Hills Sheet Metal and the reason why I haven't done that, I explained a few seconds ago, so I'm actually asking for a deferral of any decisions that may be made by yourself until such time as I've been out to see the people on site.

10 COMMISSIONER: Thank you, Mr Young. Mr Cowie, are you in a position to speak to the commission?

MR COWIE: I believe so, commissioner, yes.

COMMISSIONER: You're on our books as a -

MR COWIE: Yes, I've advised Mr James of that accordingly.

15 COMMISSIONER: Thanks very much. I'm sorry, I wasn't aware of it. That's why I was inquiring. Now, what have you got to say?

MR COWIE: Thank you, commissioner. The submission by the TCCI - I should say from the outset that the Master Plumbers Association represent the plumbing industry in Tasmania and as such we feel just a little uncomfortable with the fact that the proposal embraces a contractor who appears to be paid under the award but they may not necessarily be governed by that award being sheet metal workers and not necessarily plumbers. I'm just not sure how that came about.

20 Notwithstanding that, commissioner, we have no difficulty with the fact that there's an exemption applied for for a fund which, for all intents and purposes, appears to meet the criteria of an approved fund and we wouldn't oppose the application on that basis.

25 We would, nevertheless, oppose the application on the basis that there's a deletion of clause 48(d) and 48(e) which has the effect of leaving Tasplan as the only recognised fund in the award and unless somebody cares to come to the commission and make separate and particular application to the commission, then they will otherwise be obliged to pay their superannuation into Tasplan.

30 We don't have any difficulty as such with Tasplan but we do wish to bring to your attention, commissioner, that there are a number of other funds and I might simply, if I can, table the relevant page from the federal award, commissioner, and that mentions a number of other funds such as BUS, QUEST, AUST and various others including Tasplan.

40 COMMISSIONER: **EXHIBIT C.1.**

MR COWIE: There is also, commissioner, as I understand, another proposal to include a fund called Tradesup, which is rather new on the market and is being promoted widely throughout Australia and I would anticipate that that will find its way as a competitor to Tasplan in the market. We in the market place here, believe that competition in this area is very healthy. We believe it's in the best public interest to ensure that the award doesn't restrict the options to simply Tasplan, that there's a number of options in the award that people can look to, to satisfy the requirements of the legislation with respect to superannuation.

In concluding, commissioner, we feel that the application as it stands would in fact be rather restrictive and it would not be in the best public interest to have a single plan and have some respondents to this award with a need to come to the commission and make application for their employees to contribute to other than Tasplan. We feel that this would be a cost and perhaps an unnecessary one on the community at large and it would, in all fairness, not be a particularly healthy environment for both the employers and the employees. Thank you, commissioner.

COMMISSIONER: Thanks, Mr Cowie. Ms Thomas?

MS THOMAS: Thank you, Mr Commissioner. Firstly, in relation to the submissions made by Mr Young. I would oppose any move by the commission to defer this matter in any way. This matter has been one that has been considered by the employees for some months now. In fact, I have personally been dealing with this issue for at least six months. Not one of the employees of that establishment have contacted either union with any concerns about this matter.

The fact that 11 out of the 11 employees have indicated that they wish to move to the new fund is an indication of the clear support that the proposed fund has from the employees at the enterprise.

In relation to Mr Cowie's submission, it is my view - the fact is that the existing award provisions do limit employees to contributing into Tasplan only. Now, the exemption provisions, as I submitted earlier, are now not in keeping with the provisions of section 32(1B) of the *Industrial Relations Act*. It is no longer necessary that an employer by no later than 1 October 1990 apply for an exemption and I might add, that no employers did take that option up. There being no exemptions in the award at present. The provisions just aren't relevant to the provisions of the *Industrial Relations Act* and you can't make an award that is inconsistent with the provisions of the *Industrial Relations Act*.

I note Mr Cowie's submissions in respect to the number of funds identified in the equivalent federal award. I would imagine that we have the first \$8 matter coming before the commission shortly and the union have already indicated to the TCCI, in a preliminary sense, their desire for some sort of award review process to be undertaken under

the Structural Efficiency principle. We have indicated that we will participate in that exercise.

5 The superannuation provision is obviously a provision that needs modernisation and we will obviously take into account the provision in the federal award which may in fact be able to be inserted in the state award which will provide employers with greater choice in the number of industry funds available.

10 So, if it pleases the commission, I'd ask that you approve the application, operative from the date sought. If it pleases the commission.

COMMISSIONER: Yes, thanks, Ms Thomas. First of all, in relation to the deferral application or request and I suppose the response to that point covers other matters raised. The Act is quite clear, as Ms Thomas reminded me earlier in the hearing, that once an application is made in this area as to an exemption from subscribing to the award-nominated fund, once that application is made and the two requirements are met meaning, I have to be satisfied that it is a complying superannuation fund, meaning, complying with the commonwealth requirements and the second requirement is that I have to be satisfied that it meets the wishes of the employees - once that is done, my hands are tied. I am required to approve the application.

25 The evidence that Ms Thomas has brought forward, I am satisfied is sufficient for me to take that course and in that context - first of all, in relation to the commonwealth requirements, all parties here would have heard me express to Ms Thomas a preference in the long run to have a copy of that commonwealth advice that the Mercantile Mutual, if that's the name in this matter - I think it is, has been accepted as having made an irrevocable election under the *Superannuation Industry Supervision Act*. That's the end of it, and I'm quite prepared to proceed without that exact evidence but I'd have to have some evidence to the contrary to go the other way.

35 In relation to the employees and, Mr Young, I want you to appreciate that I have personal views about this but I don't think that it's appropriate for me to go past the signatures of these people here that have put to me, as their signatures. I'd have to have evidence that they were forged or whatever, to go backwards on it. As I say, I've got quite a lot of personal views about superannuation, some of them might concur with all of you and some of them probably don't.

40 In relation to employees signing their names to say they're happy to go to another scheme, I think once they do that and in the context of the provisions of the Act, it's no longer my business but I have to just accept that. As I say, speaking as an individual I don't know how anyone can assess which scheme, in the long run, is going to be the best for them in today's climate and, today, meaning today exactly, the

5 interest rates are such that I don't know how superannuation funds are able to tout their business, the returns that they give. That's only a personal view. In other words, each one of these employees is entitled to make up their own mind and I for one would hesitate to interfere, even though someone is going to be wrong somewhere.

10 So, with that little dissertation, I indicate now that I'm not going to grant the deferral and also as you can see, I'm also going to grant the application, just as another personal comment but I think there's some validity in it, superannuation provisions have reached the stage where it would be advisable, in my opinion, for the parties to approach the legislature with a view to removing responsibility for deciding on these matters from the commission. The commonwealth legislation now is virtually all encompassing, so that industrial bodies ruling on superannuation, in my personal view and I think reasonably too, is becoming unnecessary.

15 So, in that context - I'll put my reasons in writing so that you will be able to report back to your superiors, if you wish, but I will be endorsing the application, operative from the date requested.

Thank you. This matter is closed.

20 **HEARING CONCLUDED**