

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 5374 of 1995

IN THE MATTER OF an application by the
Tasmanian Chamber of Commerce and
Industry Limited for a hearing to vary the
Welfare and Voluntary Agencies Award

re exemption from nominated
superannuation funds for Self Help
Workshop

DEPUTY PRESIDENT ROBINSON

GEORGE TOWN, 4 April 1995
continued from 15/3/95

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: Could we just have appearances again for today's hearing, thank you.

5 **MR A. FLOOD:** Thank you, Mr Deputy President, ANDREW FLOOD, for the Tasmanian Chamber of Commerce and Industry, and appearing with me **MR BARRY KINGSLEY** of the Self Help Workshop Incorporated.

DEPUTY PRESIDENT ROBINSON: Thank you.

MR M. HALL: Mr Deputy President, MIKE HALL, appearing on behalf of the Health Services Union of Australia, Tasmania No.1 Branch. Appearing with me is **MS BECKY SHELLEY**.

10 DEPUTY PRESIDENT ROBINSON: Thank you. When we last met there was some material submitted by the applicant showing cause why the award should be varied. Notwithstanding that the material was put forward there was a request for an adjournment raised by HACSU on the basis that it was desirable for the employees of Self Help Workshop to be in possession of all of the information in relation to the best
15 options so far as a superannuation fund was concerned as between existing award provisions Tasplan and HESTA and the proposed exemption to be granted to allow Mercantile Mutual Employer Sponsored Master Fund to be utilised.

I granted that adjournment because I, too, believed that it was necessary for
20 employees to make an informed decision before the award was to be changed and I didn't specify what should happen. I left it to the good sense of the parties to get together and to see how additional information - full information could be made available to the employees of Self Help Workshop.

Could I have a report of progress? I have received some copies of correspondence of course, which is on file. Mr Flood?

25 **MR FLOOD:** Perhaps, Mr Deputy President, if I could just run quickly through those - the correspondence which I've provided you with a copy.

DEPUTY PRESIDENT ROBINSON: Yes.

30 **MR FLOOD:** HACSU wrote to the TCCI proposing that representatives from Tasplan, HESTA and the Mercantile Mutual Employer Sponsored Master Fund be invited to attend meetings of employees to explain to them the - the various provisions of the - of the funds and - and to enable supposedly the employees to make a - a fully informed decision on which fund to use.

DEPUTY PRESIDENT ROBINSON: Yes.

35 **MR FLOOD:** Having received the letter from HACSU, I've provided Mr Kingsley with a copy of that letter and asked him to provide each employee with a copy in turn. Each employee then had a look at the letter and the unanimous decision from the employees was that they did not wish to speak to any other representatives from the superannuation administrators; that they believed that they had sufficient information
40 already to make an informed decision on which fund they wished to have their contributions made to.

Further to that and since I - and - sorry - I then informed HACSU of the employees decision.

DEPUTY PRESIDENT ROBINSON: By letter?

MR FLOOD: By letter.

DEPUTY PRESIDENT ROBINSON: Yes - and that's the copy of the letter you sent to me and I -

MR FLOOD: That's correct.

5 DEPUTY PRESIDENT ROBINSON: And I take it, it's now been received by - by HACSU.

MR HALL: Yes, Mr Deputy President.

10 MR FLOOD: Since that letter was sent, which was on the 30th March, I've asked Mr Kingsley to go back to the employees and advise them that Tasplan requires three months' notice in the case of transfer of funds from their fund to another fund which we hadn't advised the employees of previously - we considered that it was a straight roll over rather than a transfer of funds.

DEPUTY PRESIDENT ROBINSON: Yes.

15 MR FLOOD: Having gone back to the employees and advised them that there was to be a - there was to be three months notice given, the decision of the employees remained the same. That was, that they wished the Mercantile Mutual fund to be the nominated fund.

20 DEPUTY PRESIDENT ROBINSON: Yes. I find it a little bit uncomfortable - and I put it no higher than that - where we have a situation where it's - we've got an employer application indicating the wishes of employees and whilst we have a written document signed by employees, all of the - all of the information the commission is getting is second hand or third hand and I think it would be preferable if the commission could have a situation where there is more information directly from the employees rather than going through a second or third party.

25 I mean we've got an enterprise - separate enterprise bargaining system and as I understand it, there is a process there where employees are either brought to the hearing - place of hearing or they are interviewed on the job and, as I understand it, are interviewed sometimes, if not all - well certainly not always from the information that gets back to me - in the absence of the employer so that - I mean people can then demonstrate that there has been absolutely no suggestion of duress. And I'm not suggesting that there has been but I'm just saying that the procedure is most unusual where the information I'm getting is second or third hand information and it's - it's coming via an employer and normally there is a bit of a gap - a distance between - between the role of the employer and his employees, even where they don't choose to have representation of a registered organisation.

35 MR FLOOD: I'm happy to follow your recommendations in that respect.

40 DEPUTY PRESIDENT ROBINSON: Yes. I mean the - I rely on the fact that the act says in 32 that I must be satisfied on two matters; first of all that the superannuation fund which is to be used is a complying superannuation fund. I've no reason to suggest that - that Mercantile Mutual Employer Sponsored Master Fund is not a complying fund, but the act says also that the superannuation which is - is one which the commission is satisfied meets the wishes of employees and that's the obligation placed on me.

MR FLOOD: Mr Kingsley is here as the manager of the Self Help Workshop, Mr Deputy President, but of course he is also an employee of the Self Help Workshop.

DEPUTY PRESIDENT ROBINSON: Right. Right. Look, just to help me here today, could I - could I get a better handle on exactly what is Self Help Workshop Incorporated for a start?

MR FLOOD: Perhaps Mr Kingsley might like to explain.

5 DEPUTY PRESIDENT ROBINSON: Yes. Would you help us, Mr Kingsley?

MR KINGSLEY: Yes, Mr Deputy President. It's - Self Help is a sheltered workshop catering for disabled adults.

DEPUTY PRESIDENT ROBINSON: Aha.

10 MR KINGSLEY: There's about 48 disabled people there and a staff of about seven-eight. We do a variety of work - recycling, woodwork, sewing -

DEPUTY PRESIDENT ROBINSON: Yes.

MR KINGSLEY: - and that sort of thing and mainly the people that want to change to the different fund are supervisors and myself as manager.

DEPUTY PRESIDENT ROBINSON: Yes. Yes, I see. And it's a daytime operation?

15 MR KINGSLEY: Daytime operation - yes, sir.

DEPUTY PRESIDENT ROBINSON: Yes - Monday to Friday.

MR KINGSLEY: Yes, sir.

DEPUTY PRESIDENT ROBINSON: Yes. No residential care or anything?

MR KINGSLEY: No. No.

20 DEPUTY PRESIDENT ROBINSON: And what's the make-up of the board or the corporate body?

MR KINGSLEY: Well the Board of Directors is made up of men and ladies from the community. There's accountants, managers, a doctor, two retired people - a lady school - head of one of the school departments.

25 DEPUTY PRESIDENT ROBINSON: Yes, fine, okay. That gives me an idea.

MR KINGSLEY: They will work in a voluntary capacity.

DEPUTY PRESIDENT ROBINSON: Yes, fine, that's good. And what's the location - where's this workshop located?

MR KINGSLEY: 49 Amy Road in Newstead.

30 DEPUTY PRESIDENT ROBINSON: Right, fine, okay. That helps me. Thanks, Mr Flood.

35 MR FLOOD: Further to that, Mr Deputy President, I did have some concerns initially that - from my limited knowledge of self-help workshop that there may have been persons employed with some mental disability, knowing the type of people that do work there. However none of the employees are in that category.

DEPUTY PRESIDENT ROBINSON: Right, fine. Now before turning to Mr Hall, could I also get a understanding of what the process was by which the information was provided to the employees and the advice conveyed back. Were they addressed as a group or individually, alone or with twos or threes or -

5 MR FLOOD: You're referring to the events since the last hearing or prior to that?

DEPUTY PRESIDENT ROBINSON: Yes. No, I think if we could just pick up from the period from the last hearing, it would certainly be indicative of - you know, to give me an understanding.

MR FLOOD: Again, I might rely on Mr Kingsley to provide that information.

10 DEPUTY PRESIDENT ROBINSON: Yes, sure.

MR KINGSLEY: Everybody was - it was in single discussions and then it was a group discussion.

DEPUTY PRESIDENT ROBINSON: Were they called in to a private area or what?

MR KINGSLEY: No, just in the dining room.

15 DEPUTY PRESIDENT ROBINSON: On the work -

MR KINGSLEY: Yes. And we just -

DEPUTY PRESIDENT ROBINSON: And who interviewed?

MR KINGSLEY: I actually spoke to each employee on their area of work, then that afternoon we met in the dining room.

20 DEPUTY PRESIDENT ROBINSON: But individually?

MR KINGSLEY: No, we met as a group.

DEPUTY PRESIDENT ROBINSON: As a group?

MR KINGSLEY: Yes.

DEPUTY PRESIDENT ROBINSON: And what was put to the employees?

25 MR KINGSLEY: Well we just asked them did they feel - did they need any more information and they sort of said no, they didn't.

DEPUTY PRESIDENT ROBINSON: Was it taken as a show of hands or just by acclamation?

MR KINGSLEY: Yes, just asked each one, yes. Actually each one had indicated -

30 DEPUTY PRESIDENT ROBINSON: When you say each one, each one indicated individually?

MR KINGSLEY: Yes, each one had indicated before - individually before we met as a group what they wanted to do. And it was -

35 DEPUTY PRESIDENT ROBINSON: So they indicated individually and then as a group?

MR KINGSLEY: Then as a group, yes.

DEPUTY PRESIDENT ROBINSON: And was any recommendation or advice given to them?

5 MR KINGSLEY: Only - not really, no. It was only each one was asked did they feel they - did they need any more information. They didn't. But this probably, sir, goes back a long time. Originally when Tasplan came in we always had a super fund and at that stage we wanted to put the 3 per cent at that stage into the super fund, but we found because of the law we couldn't.

DEPUTY PRESIDENT ROBINSON: Yes.

10 MR KINGSLEY: And now - you know, 3 or 4 years down the track we found we may be able to and that was the idea so that we can have all moneys in the one fund.

DEPUTY PRESIDENT ROBINSON: Yes, well that makes some sense, I think. But it still comes back to what is going to be in the best interests of those employees as to where all of their funds are channelled, and the employers funds. And it comes back to a question, I suppose, of which of the three funds under consideration, or two funds under consideration - I'm not sure whether it's two or three. But which, for instance, has got lowest costs and charges, which has got the best performance, which has got the best type of coverage. And perhaps - I don't know - perhaps could Mr Flood advise us what has been the performance of each of the respective over the last 2 or 3
15
20 years.

MR FLOOD: Yes, the document that I provided to you at our last hearing, which was marked TCCI.1, provides from Mercantile Mutual and from Tasplan a summary or rundown, if you like, of the major components of each of their respective funds.

DEPUTY PRESIDENT ROBINSON: Yes, but I'm asking you for your informed opinion to assist this hearing.
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MR FLOOD: I'm not going to profess to be an expert on superannuation, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: No.

MR FLOOD: I barely understand my own fund. The only thing I can say to you is that the information that we have provided to the employees, they believe that it is sufficient for them to make an informed decision.
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DEPUTY PRESIDENT ROBINSON: Well, okay.

MR FLOOD: The HACSU opposition to the application, I must say, they aren't representing directly any of the employees there and perhaps it's more on a matter of principle, as it is -
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DEPUTY PRESIDENT ROBINSON: Well the only thing is they've got a registered interest in this award.

MR FLOOD: Yes, I certainly understand that.

DEPUTY PRESIDENT ROBINSON: And just as TCCI.1 has, and you wouldn't like it if I was to ignore TCCI when a matter like this comes on.
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MR FLOOD: I'm certainly not suggesting that at all. However what I am suggesting is that the opposition from HACSU is against the wishes of the employees.

DEPUTY PRESIDENT ROBINSON: How do you know?

MR FLOOD: Because the employees have - the information that we've put to the employees at the request of HACSU has been unanimously rejected.

5 DEPUTY PRESIDENT ROBINSON: Have you asked them to tell you in turn which has got the best performance?

MR FLOOD: No, I haven't.

DEPUTY PRESIDENT ROBINSON: Have you asked them which has got the lowest charges?

MR FLOOD: No, I haven't.

10 DEPUTY PRESIDENT ROBINSON: Well how do you know that they know that? Let's just take - have you got transcript there. You've referred to TCCI.1 and you referred to it last hearing at page 4 of the transcript near the bottom. I think it is paragraph 30.

MR FLOOD: Yes.

15 DEPUTY PRESIDENT ROBINSON: You say - I asked, first of all: And the administrative charges under Tasplan are higher than the new proposed scheme - that's a question. You say: No, they're not; they're similar. And you say: Perhaps if we can look at the appendix to document TCCI.1, the first page of the appendix, at a): Details of the administration fess with the Mercantile Mutual Fund, which are four and a half per cent of all contributions received each year. Then you say: \$45 per year.
20 Now are you saying that \$45 per year is four and a half per cent of contributions?

MR FLOOD: I am, yes.

DEPUTY PRESIDENT ROBINSON: Are you?

MR FLOOD: That's the advice from Mercantile Mutual.

25 DEPUTY PRESIDENT ROBINSON: And commission fee of two and a half per cent received on each policy. Two and a half per cent of what, do you know?

MR FLOOD: Of all contributions received.

DEPUTY PRESIDENT ROBINSON: Right. And how does that compare with Tasplan?

MR FLOOD: Well Tasplan aren't on a percentage based fees. They're on a flat rate of 80 cents per week.

30 DEPUTY PRESIDENT ROBINSON: Well what are the mathematics of that?

MR FLOOD: For some full-time employees I could well believe that the Mercantile Mutual scheme may be - administration fees may be higher. Perhaps we'd find if we looked at part-time employees it may be different.

DEPUTY PRESIDENT ROBINSON: Right.

35 MR FLOOD: But further than that, I'd submit that administration fees are only one part of the superannuation funds and shouldn't be looked at in isolation.

DEPUTY PRESIDENT ROBINSON: Of course, of course, I wouldn't disagree with that. Are self-help workshop employees part-time, casual or full-time, weekly or what?

MR KINGSLEY: Most are full-time, one casual.

DEPUTY PRESIDENT ROBINSON: I see. So that is suggestive that the fees that they pay would be higher under Mercantile Mutual.

MR FLOOD: You could well be right, Mr Deputy President.

5 DEPUTY PRESIDENT ROBINSON: Well I asked the question.

MR FLOOD: However in answer that that I can only say that the employees have been provided with this information that you're bringing up at the moment and they have each decided that the Mercantile Mutual Fund would be more beneficial to them.

DEPUTY PRESIDENT ROBINSON: Why?

10 MR FLOOD: I can't explain to you why employees make that choice. It's obviously a personal choice. DEPUTY PRESIDENT ROBINSON: Yes, but I think you'd agree, superannuation is a very important matter and not to be treated lightly and it's for that reason that I'm just not allowing this - this application to be granted without we make sure that - that the - the recipients are not made worse off. It's as simple as that.
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MR FLOOD: Mm. I mentioned earlier, Mr Deputy President, that I'd be happy to follow your instructions on the matter.

DEPUTY PRESIDENT ROBINSON: Yes.

MR FLOOD: Can I inquire perhaps as to what you believe may be appropriate?

20 DEPUTY PRESIDENT ROBINSON: Well I intend to hear both sides before we get to that - to that stage. But just before we leave the performance and charges of funds, does the Mercantile Mutual Employer Sponsored Master Fund - and I think I'll just call it the Mercantile Mutual Fund from here on if you don't mind - does that provide a life - I mean a death cover - as I understand Tasplan does - and correct me again if I'm wrong?
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MR FLOOD: My understanding of Tasplan is that they provide death and disability cover, however it is a further - there is a further charge on top of the - it's in addition to the 4%.

DEPUTY PRESIDENT ROBINSON: Well is that an advantage or a disadvantage?

30 MR FLOOD: Again, it's up to each of the employees, I believe, to make up their own minds on that.

DEPUTY PRESIDENT ROBINSON: Well I think that's rather a pedantic sort of approach to take with the greatest of respect - that, you know, if employees are not fully understanding of the - of the benefits and - of each on a comparative basis, then they're - then if they don't understand that and prima facie it appears from what's coming out here today that - that they ought to have a proper second look, then I don't think we'd be doing our duty if we were to simply say, okay, whatever they want they can have.
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MR FLOOD: Well I think what I'm saying is that it's not what I think of each of the respective funds - the decision certainly isn't mine. The decision certainly isn't HACSU'S - it - the act requires you to be satisfied that it's the wishes of the employees.
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5 DEPUTY PRESIDENT ROBINSON: Now I'm not quite sure that I understood the response from Mr Kingsley when I asked the question earlier as to whether or not employees had been given any assistance in making up their mind - whether there have been any recommendation or not concerning the supply of additional information.

MR FLOOD: My understanding there wasn't, Mr Commissioner, but perhaps you may wish to -

10 DEPUTY PRESIDENT ROBINSON: Well I thought the reply was 'well not really' which raises in my mind the possibility that it wasn't as clear cut as that. Could Mr Kingsley just say whether there was any - any - anything put to employees other than, it's your decision, I'm not going to - I'm not going to advise you one way or the other - was there any -

15 MR KINGSLEY: That was the - yes - that was the gist of it. There was no additional information given. One employee went and got a lot of information himself from the Department of Labour and Industry and he folded up and he came back and said he felt it was the best way to go and the Department of Labour and Industry told him, I believe that it was a 60% majority would be enough to - for people to go over, but we've actually got 100% of people wanting to go over into Mercantile Mutual.

DEPUTY PRESIDENT ROBINSON: Run that past me again - what was the 60%?

20 MR KINGSLEY: The Department of Labour and Industry actually told the employee that there was only needed a majority of 60% for us to change over into the Mercantile Mutual Fund, we've actually got 100% wanting to join.

DEPUTY PRESIDENT ROBINSON: Oh, their advice was there some ballot conducted was there to arrive at -

25 MR KINGSLEY: No, no - the Department of Labour and Industry informed him that it was only needed 60% majority.

DEPUTY PRESIDENT ROBINSON: Oh, well, we're - that's very instructive and helpful to us I'm sure. Okay.

MR KINGSLEY: But I mean he came back with that in writing and so forth.

30 DEPUTY PRESIDENT ROBINSON: Yes - did he?

MR KINGSLEY: I mean he felt it was necessary to go and check it out for himself.

35 DEPUTY PRESIDENT ROBINSON: Yes. I'm wondering - look, to get over all this why there ought not perhaps be a - at least a physical opportunity for people to receive representation from others as to the relevant facts in relation to the respective schemes and finally a properly supervised quickie ballot where somebody fills in a piece of paper. I don't want this thing to be dragged out unnecessarily and I don't want to appear to be pedantic but I just want to be satisfied that the result is appropriate.

Perhaps I should ask Mr Hall to come in at this stage after we've been through all that if you've finished, Mr Flood. Did you have anything else to add?

40 MR FLOOD: No - no more.

DEPUTY PRESIDENT ROBINSON: Mr Hall?

MR HALL: Thank you, Mr Deputy President. As you've already been made aware there was a letter sent by HACSU to the employer through Mr Andrew Flood, putting together a proposal which we consider to be fair and equitable to all of the parties and you've also been advised that that proposal was rejected although as it's been stated here today it seems to be by word of mouth of the employer and we haven't heard anything from the employees at all.

The only concern that HACSU has in this matter - and it's not just a matter that's related to self help, it's a matter that could be set as a precedent throughout the industry, is the - is to satisfy ourselves that the employees' interests - or best interests are taken into account, and that is our prime objective in appearing before you, sir.

As you've already quite rightfully pointed out, Mr Deputy President, the Industrial Relations Act under section 32(1) does require you to be satisfied that the proposal meets the wishes of the employees. And that is, that they have made an informed decision and to quote you, sir, from the transcript of the last hearing, by making a comparison between the two existing award schemes and the new one proposed. So from that, sir, I would suggest there needs to be information for the employees to make that comparison between HESTA, between Tasplan and between the employers proposed scheme.

Quite obviously, we believe that this has not been done and I will during my submission make it clear that it has not been done. In fact if I could refer you to page 9 and line 15 of the transcript of the previous hearing held on the 15th March, Mr Flood says - and I quote: The information provided to the employees has been - has been - obviously hasn't been complete. Superannuation is something that most of us don't understand I think. It certainly hasn't been complete but it's certainly covered the most important matters and certainly the matters would concern all employees.

So it appears, sir that the - from the employers own admission that the information given to employees has not been complete. When Tasplan were requested to provide a statement to the employee - to the employer - on such things as administration charges, roll over, et cetera, they did so on the basis that it was their understanding that if any change were to be made then it would be made to HESTA, and I understand that there has been an exhibit put to you, sir, that clearly indicates that from Tasplan. I think it was exhibit HSUA.1.

I'd just like to explain that Nexus is now - has now been taken over by a company called Suncorp and the only function Nexus or Suncorp has is to administer both the Tasplan and HESTA funds.

At the previous hearing in response to a question from you, Mr Deputy President, as to whether there will be any exit fees involved, Mr Flood answered very clearly no and I've since spoken to Mr Doulton from Nexus who advises me that there would in fact be a charge and having a look at the documentation forwarded to the TCCI from Nexus - and it was there exhibit TCCI.1, that is in fact very clearly put in their document to the TCCI that there is an exit fee charge. And I'm not suggesting for one moment that Mr Flood has attempted to deliberately mislead this hearing, all I would say is that it appears to me that it is all part of the confusion that is surrounding this whole problem and we believe it's something that needs to be addressed.

Another area of confusion for me anyway, and it's been compounded this morning by what Mr Flood says, is the charges made by each of the two funds in question. On page 4 between lines 30 and 38 of the previous hearing transcript Mr Flood gives a comparison of charges for Mercantile Mutual and Tasplan. And I'd like to explore this figures in more detail. If an employee were earning \$400 a week, that is \$20,080 per annum, the contribution at 4% would equal something like \$803. Using Mr Flood's figures for Mercantile Mutual, 4.5% of those contributions, that is 4.5% of \$803 is

5 \$36.14. The \$45 appears to me to be an annual charge and I cannot accept that it is 4.5 per cent of the total contributions. To me it just doesn't add up. Then there is the question of the 2.5 per cent commission fees on all contributions and 2.5 per cent of \$803 is yet another \$20.08. So if the \$45 was included in that, it is obviously then a charge of \$101.42. If it is not, then it is something around about the \$60. The charges for Tasplan for an 80 cents per week amount, amounts to a total of \$41.60 per annum.

10 I realise, of course, that there are some variables that could change that, but I've had some of those doubts removed this morning when I hear that most of the employees are in fact full-time. And I may have misread the ... on the Mercantile Mutual figures and, if so, I'd be very pleased to know where. And also I'd be very interested to know where the 2.5 per cent commission was paid because it looks to me as if - and I may be wrong again - it looks to me as if the 2.5 per cent is in fact paid to the employer, and Tasplan and HESTA pay no commissions to any party. All the funds, other than the charges, go into this scheme.

15 There's a number of other grey areas that need to be explored, I believe, and they include - and it's already been raised by you this morning, Mr Deputy President. What the insurance benefits are, whether there are losses or gains by changing funds from Tasplan to Mercantile Mutual. It appears from the Mercantile Mutual documentation that we have before us that there are no insurance benefits to the employees, whereas in Tasplan there are.

20 There's also the question of whether it would be in the employees best interests to have all of their superannuation payments paid into either Tasplan or HESTA. My experience is that there are penalties for getting out of funds, and I've experienced that myself and in fact quite recently chose to lose something like to \$2,000 in penalties simply because over a period of 3 years the charges would pick that up for me and from then on I'd be considerably in front. But that's my own personal problem.

25 Certainly Tasplan shows a significant benefit over Mercantile Mutual. Mercantile Mutual figures for '92 - for the year '92 is that they return 5 per cent. In that same year Tasplan returned 13 per cent. Mercantile Mutual for the year ending '93 returned 6 per cent and Tasplan returned 9.2 per cent. So there are considerable differences in those percentages and I believe that if employees were able to have that information passed on to them, that they may have a different view of where they're going.

And I'd certainly like to reiterate, I'm not an expert on superannuation and I don't think anybody here today would profess to be one.

35 DEPUTY PRESIDENT ROBINSON: Certainly not I, Mr Hall.

40 MR HALL: And Mr Flood has already admitted to that fact. My point is that none of us would or could, I believe, make a decision based on two single sheets of paper. And that appears to me to be the only things that the employees have seen. They've seen a piece of paper from Mercantile Mutual that simply lists what they consider to be what they have to offer and another one from Tasplan which was sent to the employer not understanding fully, we believe, what it was going to be used for. And those two pieces of paper are the only two pieces of paper that the employees have made a decision on.

45 And I would suggest to you, sir, that certainly as far as I am concerned, if I was making a commitment to superannuation for the long-term, then I would want to be talking to somebody about it other than reading two submissions on single pieces of paper.

My organisation is of the view that our proposal to have this matter resolved is not only fair to all the parties, but it is essential to the employees to providing all the necessary information. Our proposal sets no precedents, it's the same proposal

adopted at Douglas Parker, now known as Rehabilitation Tasmania, before it moved in to the private sector. And I pointed that out in the letter to Mr Flood.

5 On that occasion the employees elected by a democratic vote to move to a fund outside of the award nominated funds. And if after all that was gone through the employees themselves made that same sort of decision, then of course we would accept it knowing that they had been given the information that they should have been given before they were required to make that decision.

10 If I could just run through the proposal. The proposal is, as is stated in the letter to Mr Flood, our preferred option would be for the employees to be given the opportunity to have three funds present a submission to meetings of employees so that they can question the fund representatives in detail about their product. I propose that representatives from Tasplan, HESTA and the employers preferred fund be invited to attend meetings of employees to present their funds position. The meeting should be on separate days and be of no more than 30 minutes duration. Now I believe that that is a fair way for employees to become advised on the funds so that they can ask questions and get answers from the people representing those funds.

We then go on to say that within 3 working days of the final meeting employees should be allowed to vote on which fund should handle their contributions. And again that is clearly a democratic way of doing it.

20 The HACSU would also like to have the opportunity to explain to the employees our role in this matter, and to this end the meeting be arranged before the funds make their presentations. We would, of course, expect to participate jointly with management in conducting the ballot.

25 The reasons for that is that I believe that it is important that the employees know that we're not just trying to overturn a decision that they may have made albeit in our view ill informed, but we need to demonstrate to them that we have no interest in this other than we want to see that they make the right decision. And by offering to participate in the ballot is simply to satisfy ourselves and then we could report to the commission that we are satisfied that the decision has been made by the employees and they have received all of the information that they should have.

30 I couldn't conclude my submission here this morning, Mr Deputy President, without revisiting the issue of exemptions, which was referred to at the 15th March hearing, when you right correctly pointed out, Mr Deputy President, that any exemption application should have been made prior to the 18th September 1989. In this case the reasons being given to change funds were - or in my view should have been known at that time. And that was the most appropriate time to do it. I don't believe that the funds charges have changed dramatically since that time. The employer has already said that he was contributing to that fund before that time.

40 Finally, I believe that there is enough doubt, demonstrated doubt for you to make a recommendation that the parties do resolve the matter in the manner outlined in our letter to Mr Flood dated 20th March 1995, and I would be asking you, sir, to make a recommendation that covers that proposal. If the commission pleases.

DEPUTY PRESIDENT ROBINSON: Thank you, Mr Hall. Mr Flood?

45 MR FLOOD: Yes. I take aboard most of what Mr Hall has said and I find myself - find I'm starting to repeat myself. But the administration fees, the return on investment and so on is, I believe, clearly set out in the information given to the employees. It's not a too difficult task to compare one against the other. And the employees - as I say, I'm starting to repeat myself. The employees, I believe, have made the decision fully informed on comparing the two funds in question.

5 However having said that, and referring back to what I have already said, we would be prepared to step backwards and have the employees meet representatives of various companies. Obviously the two funds that should be considered are Mercantile Mutual and Tasplan. In respect to the third or fourth or whatever fund, I would submit that the employer should choose which fund that should be. The reason I say that is that this application has come about because of the employees wish to avoid the doubling up on administration fees that currently have with two funds in existence.

10 What we would be asking, if it was to move to another fund - for instance, if the award superannuation was to move to another fund, the employer may decide to leave their superannuation fund with Mercantile Mutual. Obviously that's achieved nothing. To make - I'm sorry, I'll start again. To provide for the employees' wishes to avoid the doubling up on administration funds, obviously we need to be using the one fund. If the employer is to make 5 per cent contribution into a fund as well as the 4 per cent, it should be to a fund that they approve of. In other words, what I am saying is if, for example, HESTA is to be the third fund the employees may well choose to use HESTA for the award superannuation and the employer may say we don't like that fund and decide not to use it.

So, if we are giving the employees a choice -

20 DEPUTY PRESIDENT ROBINSON: Well, we would be back where we started, wouldn't we, virtually?

MR FLOOD: If we are giving the employees a choice it should be a choice of funds that the employer approves of and can therefore combine the two.

DEPUTY PRESIDENT ROBINSON: Tell me, does any benefit - any financial benefit - go to the employer from Mercantile Mutual?

25 MR FLOOD: The 2.5%, commissioner, I can't - I believe that is to the salesmen - and Mr Kingsley can confirm this. Selfhelp receives nothing. Mercantile Mutual do that.

DEPUTY PRESIDENT ROBINSON: Is there any other business, any other insurance business placed with Mercantile Mutual besides superannuation?

MR KINGSLEY: No, sir, only the superannuation.

30 MR FLOOD: The reason that Selfhelp workshop wishes to continue to use Mercantile Mutual is that they have used them for quite some years now and obviously they have built up a history. They are happy with their performance, and they know the staff, and so on.

35 DEPUTY PRESIDENT ROBINSON: What difference does it make to the employer at all? I mean, it is the employees' money which is contributed by the employer, for sure. What difference does it make to the employer which fund is used?

MR FLOOD: Well, you have hit the nail on the head where you have said the employer is making the contributions. Obviously it is not their money once the contribution has been made.

40 DEPUTY PRESIDENT ROBINSON: That's right, yes. But it escapes me, and I don't profess to have a great deal of vision in these sorts of matters, but it escapes me why the employer would be so concerned to stay with the one fund.

MR FLOOD: Perhaps I can say they know who they are dealing with and they have the confidence that Mercantile Mutual will best look after their employees.

DEPUTY PRESIDENT ROBINSON: Well your organisation has got a strong input into Tasplan. Are they not a reputable plan?

MR FLOOD: I am not going to suggest anything along those lines, no.

5 DEPUTY PRESIDENT ROBINSON: So, okay, you are responding by saying that you agree that there be the opportunity created for the three funds concerned to have representatives give a short face-to-face explanation of the benefit of their schemes.

MR FLOOD: Which three funds that may be, I'd -

10 DEPUTY PRESIDENT ROBINSON: Right. Mr Hall suggested that other things happen, including the opportunity to be created for the employees to also have explained to them by HACSU some information in relation to superannuation

I accept, and I am sure that Mr Hall does, that if employees just blackball the meeting and refuse to attend, well that's it. But I would find it strange that people would pass up the opportunity to hear as many people as possible concerning what is to happen in relation to their future superannuation.

15 MR FLOOD: The employees have already done so, Mr Deputy President. But, yes, I was going to suggest that. HACSU can certainly speak to the employees if that is the wish of the employees.

DEPUTY PRESIDENT ROBINSON: Yes. Yes.

MR FLOOD: We have not attempted to deny that at any stage.

20 DEPUTY PRESIDENT ROBINSON: Yes; and it goes without saying that HACSU - and I shouldn't have to say it - that HACSU would attend at a mutually convenient time, so that it is not disruptive to the work being carried out there. And, well, I am sure they would stand on their reputation that they would do it in a proper manner.

25 MR FLOOD: I would just remind you, Mr Deputy President, and I am sure it is not absolutely necessary, however, if we were to go down this path and eventually conduct a ballot, the ballot would be asking employees which fund they wished their award superannuation to be contributed to.

DEPUTY PRESIDENT ROBINSON: Yes, well that is all we can be concerned with.

MR FLOOD: Yes.

30 DEPUTY PRESIDENT ROBINSON: Yes. Yes. Well, I would recommend that that happen, and I accept that the final decision is mine. I have that responsibility and I accept it, of course.

35 MR FLOOD: I will, at the conclusion of this hearing or perhaps later on when we get back into Launceston, I will contact Mr Hall and the superannuation providers whichever we decide on and we'll arrange that.

DEPUTY PRESIDENT ROBINSON: Yes. I think it is about time we got rid of this matter and concluded it.

Okay, well I think that is a sensible suggestion and I thank the parties for cooperating in the way that has been indicated. Mr Hall?

40 MR HALL: Could I just be clear on it? Are we saying that the proposal outlined in our letter is going to be accepted by the employer? Is that my understanding?

MR FLOOD: Not necessarily HACSU. We will discuss that further.

MR HALL: Well, that creates us with some problems.

DEPUTY PRESIDENT ROBINSON: Are you saying that you wouldn't necessarily give right of HACSU to -

5 MR FLOOD: HACSU may well be the fund that we would -

DEPUTY PRESIDENT ROBINSON: I am sorry, I am talking about the union. The organisation represented here today.

MR FLOOD: Sorry:

10 DEPUTY PRESIDENT ROBINSON: I'm talking about the Health and Community Services Union.

MR FLOOD: Excuse me, I am confusing HACSU with HESTA. I apologise. It comes from using acronyms too often, doesn't it?

DEPUTY PRESIDENT ROBINSON: Yes.

MR FLOOD: No, HACSU is no problem at all.

15 DEPUTY PRESIDENT ROBINSON: Oh, right.

MR FLOOD: I am sorry.

DEPUTY PRESIDENT ROBINSON: Okay.

MR FLOOD: Sorry to throw a scare into you.

DEPUTY PRESIDENT ROBINSON: Well, we don't have that problem.

20 MR FLOOD: No.

25 DEPUTY PRESIDENT ROBINSON: I can't basically see any difference from the proposal which was outlined in HACSU's letter - of whatever date it was - for there to be the three funds' representatives to come in and have a brief word and for HACSU - being Mr Hall's organisation - to also be given the opportunity, with a time and place fixed, to inform employees about superannuation and for there to be a ballot in a cooperative way to make sure that it is fair and above board.

MR FLOOD: Again, I am repeating myself. We haven't sought to deny the employees any information right from the start.

DEPUTY PRESIDENT ROBINSON: No.

30 MR FLOOD: So, if that's -

DEPUTY PRESIDENT ROBINSON: Well, we can only try to help them as best we can, and I agree with you it is their decision finally. But I just felt that I had an obligation to make sure that they make an informed decision.

MR FLOOD: We, of course, can't make up their minds for them.

35 DEPUTY PRESIDENT ROBINSON: No, quite.

MR FLOOD: But, yes, we can provide the information.

DEPUTY PRESIDENT ROBINSON: Good. All right, I don't think that we need to -

5 MR HALL: I mean, as long as it is clear that both ourselves and HESTA, Tasplan and Mercantile Mutual are the four people that are going to be included in this proposal, I don't have a problem with that.

MR FLOOD: Can I ask why HESTA must be the alternative?

MR HALL: Because it is in the award and because the employees clearly under the act have to be able to be given a comparison between the two award ones and the proposed one.

10 MR FLOOD: Well, I dispute that that's in the award.

DEPUTY PRESIDENT ROBINSON: Well, look, I don't see any harm would be done by as much information being provided as possible, and if there is some information in relation to HESTA which can be passed on before the employees confirm what their view is, I can't see any harm in it myself.

15 I think it would be better to err on the side of giving people more information than not. Okay.

All right, well I will again adjourn these proceedings and just would ask to be kept advised of progress, and we need to probably fix another date which is mutually convenient and see what happens to the award. Thank you for your assistance.

20 **HEARING ADJOURNED**