

COMMISSIONER: I'll take appearances please.

**MS J. THOMAS:** JENNY THOMAS from the Tasmanian Chamber of Commerce and Industry Limited on behalf of King Island Co-op Limited. If it pleases.

5 **MR J.E. SWALLOW:** SWALLOW, J. E., AMIEU.

COMMISSIONER: Good, thank you. I take it, Ms Thomas, you're really representing the TCCI in this matter. Yes, King Island Co-op Limited are in fact members of the TCCI. So yes, I'm representing the applicant.

10 COMMISSIONER: They're not a respondent to the - haven't got an interest in the award.

MS THOMAS: No, they're not.

15 MR THOMAS: This is an application to vary subclause 49(d) of the Meat Trades Award to include King Island Co-op Limited as an employer exempt from contributing into the award nominated superannuation fund, Tasplan.

In matters of this kind, the commission is to have regard to section 32(1B) of the *Industrial Relations Act* which states:

20 *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.*

25 Now before proceeding any further, I'd like to hand up two exhibits.

COMMISSIONER: Good. Now let me see how we'll mark these.

MS THOMAS: Have them marked as two separate exhibits. The one with the statutory declaration -

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

30 MS THOMAS: And **EXHIBIT TCCI.2** is the bundle of information relating to the superannuation funds.

COMMISSIONER: Good. Thank you.

MS THOMAS: I might point out that you also have information relevant to the superannuation funds under the Retail Trades Award as well which will be dealt with in the next application.

COMMISSIONER: Good. Thank you.

5 MS THOMAS: So in order to satisfy you that the fund is one - or the proposed fund is the National Mutual Simple Super Fund and in order to satisfy you that this fund is one which you would be satisfied meets the wishes of employees, I'd like to go through exhibit TCCI.1 in some detail.

10 The first document there is a statutory declaration completed by Phillip Vaughan who is a director of King Island Co-op Limited which declares or sets out the employees covered by the Meat Trades Award and who are employed by King Island Co-op. There are two employees listed there.

15 Now the second statutory declaration, I requested before lodging the application, that this further declaration be made on the basis of a previous matter in which I appeared before you, Mr Commissioner, and you had issued concerns in that matter that the employees may not have seen all the information that you had been presented with. So  
20 I asked the employer to make a further declaration that states as follows:

*I do hereby solemnly and sincerely declare that all employees of King Island Co-op employed under the Meat Trades Award were provided with the following documentation before being asked to  
25 nominate the superannuation fund into which they wanted their contributions to be made: employee election form, information sheets for Tasplan, Rest and the Simple Super [and I would suggest that Rest is superfluous to the matter we're looking at] customer information brochure for Simple Super, 1995 trustees  
30 report for Tasplan and the investment update for Simple Super September 1996.*

Now all those documents are contained within exhibit TCCI.2.

COMMISSIONER: Thank you.

35 MS THOMAS: And that was declared before a Justice of the Peace. In terms of the following documentation in exhibit TCCI.1, this is the standard employees acceptance form which the commission is familiar with. It states that each employee has been presented with a summary of key information on each fund including return on investment, administration charges, death and disability and roll-over provisions  
40 and then the employees have been given the opportunity to indicate on that form which fund they would prefer and both employees previously noted on the first statutory declaration have indicated that they wish

these contributions to be made into National Mutual Simple Super Fund.

5 Further, beyond the yellow page within that exhibit, I have attached copies of the correspondence that was forwarded to each employee organisation with an interest in the award in relation to this matter. the last document there is a response from AMACSU, as we know them in this commission, which I think I could confidently say indicates that provided the commission is happy then AMACSU would be happy with the application being approved.

10 And obviously Mr Swallow is here and would be able to make his comments in relation to the application once I've finished my submissions.

15 So in my submission, those documents contained in TCCI.1 hopefully satisfy the commission that the proposed fund, National Mutual Simple Super, is a fund which meets the wishes of employees.

20 In terms of the other requirement of the *Industrial Relations Act* it states that the proposed fund must be a complying superannuation fund. In exhibit TCCI.2 in this case I've been provided with two letters from the - copies of two letters from Insurance and Superannuation Commission which both indicate that the said fund is a complying fund and - or a regulated fund under the *Superannuation Industries Supervision Act 1993*.

If that pleases the commission and subject to any questions you may have -

25 COMMISSIONER: Just one question. In earlier times when we had this employee acceptance document, it wasn't written quite that way, was it?

MS THOMAS: Which one?

30 COMMISSIONER: In exhibit TCCI.1 - because it's not the employees making a declaration here, is it? It's really the employer making a declaration saying that this is what these employees want.

MS THOMAS: Yes. I'm not aware of any wording change but this one does date back some months.

35 COMMISSIONER: Yes. There was an earlier one that made the employees declare.

MS THOMAS: I see.

COMMISSIONER: That they had a look at the difference between the two plans and that they were sort of electing a certain plan and that they were doing it without duress and then they signed it off.

MS THOMAS: Yes, I can see what you mean by the wording used.

COMMISSIONER: This is not the employee declaration, is it. It's the employer stating something.

MS THOMAS: It is.

5 COMMISSIONER: But the TCCI always used to have an earlier one that was an employee declaration because the employer declaration is quite right but this is not a declaration from employees, is it. I can understand what they're saying but you might take it on board to have a look -

10 MS THOMAS: Yes, I might check on that.

COMMISSIONER: - for the employees declaration form because there's certainly - well I've got a name, an address and a signature and a date quite clearly in my view showing that they want to go to the National Mutual Simple Super Fund but all the verbiage above is not  
15 an employee declaration.

MS THOMAS: Yes, I can see how the verbiage could be changed quite easily to make it a declaration from us, the employees. Like we have been provided with this.

COMMISSIONER: Yes.

20 MS THOMAS: So I'll certainly look at that and make some changes.

COMMISSIONER: Because it even refers to the documents attached to Appendix A. Now I haven't got an Appendix A.

MS THOMAS: It would be interesting to see the wording used in the Wholesale Trades Award matter because they're two different  
25 superannuation funds involved. I haven't looked at that but I will.

COMMISSIONER: I do recall that there was an earlier document where employees had a declaration. The employers had - there's nothing with the employer declaration. The employer is declaring that he has so many employees covered by the award and then declares the  
30 name of the employees. It's just the verbiage of the employees' acceptance - they should be declaring to me that they've examined both funds and they've made this choice.

MS THOMAS: Yes, I'll make some changes to that form.

COMMISSIONER: So I can just say, right, well I don't have to speak  
35 to them separately.

MS THOMAS: Yes.

COMMISSIONER: But I certainly understand what you're wanting to do. Mr Swallow, have you any submission to make in this matter?

MR SWALLOW: No, sir. It appears that the TCCI exhibits 1 and 2 indicate that all the requirements of the commission have been met and therefore should be approved by the commission.

COMMISSIONER: Yes. Right. Well, I can indicate to you then - is there any form the draft order should take?

MS THOMAS: No, I haven't prepared it. You'll note -

COMMISSIONER: I noticed in other exemptions given in this award it doesn't list the proposed fund into which they're to contribute.

MS THOMAS: Yes, I have applied to vary subclause 49(d) which is the exemptions area within the superannuation provision but it is not the standard exemption provision we're used to, so whether it's more appropriate.

COMMISSIONER: Even the exemptions that have been granted before, it doesn't say what fund they're to contribute the money into.

MS THOMAS: I gather there may not have been exemptions granted before under this.

COMMISSIONER: Yes. Yes.

MS THOMAS: Have you?

COMMISSIONER: Yes, in section 49 there a couple of exemptions there already. For Hawkridge Meat and Gilbertsons.

MR SWALLOW: That was because they had their own funds.

COMMISSIONER: But it doesn't say that they have to pay into those funds.

MR SWALLOW: No.

MS THOMAS: Now is it appropriate that we just go briefly off the record to discuss what might be appropriate.

COMMISSIONER: We might do that.

**OFF RECORD**

**ON RECORD**

COMMISSIONER: Ms Thomas.

MS THOMAS: Yes, I'd just like to amend the application to now allow the commission to insert a new paragraph (iii) into subclause 49(d) which would set out that King Island Co-op Limited is permitted to contributing to National Mutual Simple Super.

5 COMMISSIONER: Good. Thank you. No objections to that amendment is there, Mr Swallow?

MR SWALLOW: No, sir.

COMMISSIONER: No objections. Leave is granted. Now the operative date?

10 MS THOMAS: From the first full pay period on or after today's date.

COMMISSIONER: Good. Right. Well, I can indicate that the award will be varied in the manner sought.

Thank you.

**HEARING CONCLUDED**