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## TRANSCRIPT OF PROCEEDINGS

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O/N 1090732

### TASMANIAN INDUSTRIAL COMMISSION

### COMMISSIONER T.J. ABEY

**T No 13461 of 2009**

### TASMANIAN FIRE FIGHTING INDUSTRY EMPLOYEES AWARD

**Application pursuant to section 23(2)(b) of the Industrial Relations Act 1985 lodged by the Minister administering the State Service Act 2000 to vary the above award by adding a new Clause 3 – Superannuation, to Part III – Wage and Salary Provisions**

**HOBART**

**9.30 AM, FRIDAY, 26 JUNE 2009**

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THE COMMISSIONER: Yes, the appearances are the same as in the previous matter. Ms Pearce?

5 MS PEARCE: Thank you, Mr Commissioner. Commissioner, this application I  
guess is the culmination of another dispute that has been before you previously and  
which the file has recently been closed on. In that matter there was disputation in  
relation to some changes that were made to the State Fire Commission  
Superannuation Scheme and the matter concluded with a memorandum of  
10 understanding being table before you, which reflected what the parties' intentions  
were to be in terms of resolving that dispute.

As events unfolded there was a slight change in the global economic situation, which  
meant that it became clear that the previous intention, which was to close the State  
Fire Commission Superannuation Scheme, was no longer going to be a preferred  
15 option and, as such, the decision has been made that the scheme will be allowed to  
remain open. However, employees who so choose should have a period of time  
within which they can withdraw their moneys and invest them within another  
superannuation scheme and that period of time expires at the end of November 2009.

20 In order to enable that resolution to be put into effect, however, Commissioner, there  
is a requirement for us to vary the award in order that current levels of  
superannuation payments can be maintained. Under the current scheme there is a  
provision there, employees receive a superannuation contribution that is around  
about 14 per cent, and the government has committed that for employees who  
25 withdraw their funds from the scheme and transfer it to another scheme, that level of  
payment will be maintained. As a result, there is a need for the award to reflect that  
an additional 5 per cent payment will be made, over and above the Superannuation  
Guarantee Act, in order to maintain the level of payment. So that's the first issue.

30 The second issue is that for those employees who remain within the State Fire  
Commission Superannuation Scheme, there is a portion of the funds that are paid by  
the Tasmania Fire Service which is actually attributed into the superannuation  
accumulation fund within RBF and it is a figure of 3 per cent. So the application  
seeks to also preserve that arrangement and make it clear that that is part of the way  
35 that superannuation entitlements are attributed to employees who are within the State  
Fire Commission Superannuation Scheme.

So the application that you have before you – and I'll just tender what is the latest  
copy because I'm not sure whether or not a varied copy from our application has  
40 been given to you – the initial application was deficient, in that there was one matter  
that was left out of it. So we're seeking to amend, add a new Clause 3 to Part III,  
Wage and Salary Provisions of the award, entitled Superannuation. And that makes  
clear that for certain employees, there will be conditions that would apply to them if  
they leave the State Fire Commission Superannuation Scheme prior to 14 November  
45 2009. In subclause (i) it states that:

*The employer will contribute a further amount of 5 per cent to a complying superannuation fund of the employee's choosing –*

And in point (ii) that:

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*Employees who elect to exit won't be required to make any further compulsory employee contributions as at that date.*

10 The second matter is in relation to the superannuation guarantee and that employees who elect to exit after 14 November 2009 and continue to be employed, under the provisions of the State Service Act they will only receive entitlements as specified under the Superannuation Guarantee Act; so that's the 9 per cent. And, secondly, that is where employees were members of the State Fire Commission Superannuation Scheme prior to 1 July 2005 and continued to remain members of this scheme; they  
15 will receive an employer contribution of 3 per cent into the RBF Tasmanian Accumulation Scheme.

THE COMMISSIONER: I see. So if you elect before 14 November you will get 14 per cent?

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MS PEARCE: 14 per cent. Yes, that's right. Yes.

THE COMMISSIONER: After that it's 9 per cent?

25 MS PEARCE: Yes, you go back to 9 per cent. So there's a fixed time on it and, yes, you're either in it before that time or after that, no, it will be 9 per cent only.

THE COMMISSIONER: You can't be clearer than that.

30 MS PEARCE: No. So, Commissioner, we seek the commission's assistance in varying the award in the terms set out, in order to give effect to a memorandum of understanding between the parties.

THE COMMISSIONER: Thank you, Ms Pearce. Mr Warwick?

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MR WARWICK: Thank you, Commissioner. In relation to that last point, I think it's worth noting that the trust deed to the State Fire Commission Superannuation Scheme has always allowed persons to elect to leave. But their employment or their superannuation entitlements under their employment; it then would have meant that  
40 they would receive 9 per cent superannuation. So this simply reflects what is in the trust deed. I can report, however, that the trust deed has been varied, however, to allow the process that's envisaged by this new clause to proceed. That is, to allow persons to continue to receive – to exit and receive 14 per cent.

45 And I was advised yesterday by the Department of Treasury and Finance that the RBF Board of Trustees have made the appropriate amendment and it remains only now for the Treasurer to go through the process of consultation with the UFU, which,

I'm sure you can imagine, will be highly expedient from our point of view. For just about everything to be out of the way to make this scheme happen, or this arrangement happen, it will remain only to draft a deed of release for the people to sign if they wish to exit the fund. And obviously I guess it's the same if you want to  
5 take your money out of the bank and close your account; you have got to sign something. So that's only reasonable.

I think it's worth also mentioning some of the history about this 3 per cent that is referred to in the last sentence. It is my recollection, and I'm sure you were around  
10 at the time, Commissioner, that in '87 there was a – 1987, there was a trade-off in a national wage case decision, where 3 per cent pay rises were foregone to establish award-based superannuation. That didn't flow on here in the public sector until, I believe, 1990 or 1991. But what happened was that finally the government of the day did agree to provide 3 per cent additional superannuation, because most  
15 government employees had superannuation at that time, on the basis of the wage rise forgone.

Now, of course since then the Superannuation Guarantee Act of '92 was introduced and the Hawke and Keating governments progressively increased superannuation  
20 obligations on employers through to 9 per cent. And where employees enjoyed superannuation, they were not required by that Act – they were not entitled by that Act to have increased superannuation; it had to be absorbed against what was provided. I take you through that history because I think it's worth mentioning that I'm sure that I went to a meeting with David Rees and then HEF number one branch  
25 secretary Peter Imlach, later Commissioner Imlach – to a meeting when that was signed. There was an agreement signed about this and I was very young and wet behind the ears at the time.

I went to a meeting where that was signed but, in respect to saying to you now, could  
30 I lay my hands on that agreement that entitled employees to that payment; I couldn't tell you that I could. I couldn't say to you, in all honesty, that I could. So I think it is appropriate that the award reflect the statute of the status of that section of the employees' entitlements. And, by way of further explanation, the defined benefit fund for those who remain is a classic defined benefit scheme and the employer need  
35 only put in what is required to ensure that the scheme is solvent. So if the stock market is going gangbusters, they made need to put nothing. If it's going poorly, they may need to put a lot in. So in that context it's important that that 3 per cent superannuation be identified in the award.

40 But having said that and put that on the record, Commissioner, I can say to you that this is, without question, the most complicated, convoluted and the biggest headache I've ever been involved in in my life and it is such a pleasure to be able to say to you today that we believe we've got it fixed. Well, I'm sure; I'm confident we've got it fixed at last. On behalf of Tasmania's career fire-fighters, we ask that you give them  
45 the choice to control their own destiny in respect to their superannuation, which really I think is an extremely positive outcome in this whole dispute.

THE COMMISSIONER: Yes.

MR WARWICK: If the commission pleases.

5 THE COMMISSIONER: Thank you, Mr Warwick. If it's of any comfort to you, notwithstanding the fact that you can't find the agreement, I vividly recall those days when the State Government did introduce that arrangement so I've got no hesitation in saying that it did exist, even if it can't be found now.

10 MR WARWICK: Well, I wasn't with the fire-fighters at the time, Commissioner.

THE COMMISSIONER: Sorry?

MR WARWICK: I wasn't with the fire-fighters at the time.

15

THE COMMISSIONER: No.

MR WARWICK: I think that's the problem, Commissioner.

20 THE COMMISSIONER: Yes. Having heard the parties again, I can indicate that the application is approved. Presumably I will put it from today.

MS PEARCE: Yes, Commissioner.

25 THE COMMISSIONER: Yes. So we will just make it operative from today; that is 25 June 2009. Sorry, 26 June 2009. And again, a formal decision will be issued in this matter early next week. And on that basis, again, I congratulate the parties on resolving two very difficult issues and the commission stands adjourned.

30 MR WARWICK: Thank you.

**MATTER ADJOURNED at 10.00 am INDEFINITELY**