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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Conciliation and Arbitration Act 1904
s.25 notification of industrial dispute

The Australian Insurance Employees' Union

and

Adjustor and Assessors (Ass Risks) Pty Ltd and others
(C No. 30577 of 1988)

Industrial Relations Act 1988
s.99 notification of industrial dispute
s.108 reference to a Full Bench

Shop, Distributive and Allied Employees Association

and

Myer Stores Limited
(C No. 30086 of 1994)

s.113 applications for variation

The Master Builders' Association of New South Wales

NATIONAL BUILDING AND CONSTRUCTION INDUSTRY AWARD 1990
(ODN C No. 20993 of 1990)
[Print L2807 [N0122]]
(C No. 90110 of 1993)

PLUMBING TRADES (SOUTHERN STATES) CONSTRUCTION AGREEMENT, 1979
(ODN C No. 2125 of 1977)
[Print E2721 [P0092]]
(C No. 90124 of 1993)

PLUMBING INDUSTRY (NEW SOUTH WALES) AWARD 1983
(ODN C No. 3907 of 1976)
[Print F2180 [P0111]]
(C No. 90126 of 1993)

PLUMBING INDUSTRY (QLD AND W.A.) AWARD 1979
(ODN C No. 3907 of 1976)
[Print E1939 [P0090]]
(C No. 20347 of 1994)

Various employees — Various industries

PRESIDENT O'CONNOR
VICE PRESIDENT McINTYRE
SENIOR DEPUTY PRESIDENT POLITES
DEPUTY PRESIDENT ACTON
COMMISSIONER MERRIMAN — MELBOURNE, 7 SEPTEMBER 1994

Labour-on-costs - superannuation - award superannuation - superannuation legislation - s.90A Industrial Relations Act 1988 - Commission not prepared to vacate field as a result of SGC Act and SGA Act - application of SGC Act outlined - superannuation test case deals with subject matter which has been dealt with in national wages - s.90A applicable - employer's award liability to pay superannuation contribution is not affected by the payment by the employer of superannuation guarantee charge (SGC) unless the award provides otherwise - government proposes to amend SGA Act to deem payment of SGC also satisfying equivalent award obligation - in light of such proposal further action not to be taken - non-union members - Financial Clinic case impacts on awards specifying funds for non-union members - "special circumstances" will arise giving union interest when employer and non-union member agree to fund when fund to which non-union members standing alone bears in any way on employment position relative to union members - award provisions which do not repeat in full the relevant provision of the SGA Act run the risk of differing from them and be misleading having regard to their length and complexity - features of award superannuation provisions outlined - applications for greater quantum of contributions than required by SGA Act or to which contribution not required of such category of employee shall be dealt with as a special case - in other matters Commission shall insert superannuation legislation clause - award may differ when application is by consent or particular factors warrant different award provision - Commission must be satisfied on expert evidence that award will meet SGA Act - application for specific fund will not be treated as a claim above safety net - Commission will ensure application meets employers' obligations under SGA Act and apply the "special circumstances" test for non-union members - Commission shall also have regard to Supervision Act.

CONTENTS

REASONS FOR DECISION

PART 1 - INTRODUCTION

This is a test case about what provisions, if any, awards of the Commission should contain with respect to employee superannuation.

The Commission in the Review of Wage Fixing Principles October 1993 (the October 1993 decision) [Print K9700, 50 IR 285] considered the matter of superannuation; in particular in that part of the decision called "Resolution of Superannuation Disputes" [Print K9700, pp. 25-32]. This present decision takes into account the material and submissions in relation to superannuation before the Commission in the proceedings in which it gave its October 1993 decision.

The October 1993 decision [Print K9700, pp. 25-27] outlined the Commission's role with respect to superannuation since the National Wage Case decision of 26 June 1986 [Print G3600; (1986) 301 CAR 611, 14 IR 187]. We do not repeat that outline except to say that since 1986 the Commission's wage fixing principles have included a principle about superannuation. The current principle is:

> "SUPERANNUATION
>
> (a) Agreements may be certified or consent awards made providing for employer contributions to approved superannuation schemes for employees covered by such agreements or consent awards provided those agreements or consent awards:
>
> (i) operate from a date determined or approved by the Commission; and
>
> (ii) do not involve the equivalent of a wage increase in excess of 3% of ordinary time earnings of employees.
>
> (b) Where, following a claim for employer contributions to approved superannuation schemes for employees, the parties are unable to negotiate an agreement consistent with this principle, and conciliation proceedings before the Commission have also failed to achieve such an agreement, the Commission shall, subject to the provisions of the Act, arbitrate on that claim.
>
> (c) The Commission will not grant retrospective operation for any matters determined in accordance with this principle.
>
> (d) For the purposes of this principle, approved superannuation scheme means a scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds."
> [Print K9700, p. 38]

The "Resolution of Superannuation Disputes" part of the October 1993 decision [Print K9700, pp. 25-32] refers, among other things, to:

(1) the history of superannuation issues since 1986;

(2) the enactment and provisions of the Superannuation Guarantee

(Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992;

(3) the Superannuation Industry (Supervision) Bill 1993;

(4) the judgments of the High Court in Re The Manufacturing Grocers' Employees Federation of Australia and another; Ex parte The Australian Chamber of Manufactures and another [(1986) 160 CLR 341], Re The Amalgamated Metal Workers Union of Australia and others; Ex parte The Shell Company of Australia Limited and others [(1992) 174 CLR 345] and Re Finance Sector Union of Australia; Ex parte Financial Clinic (Vic) Pty Ltd and others [(1993) 178 CLR 352];

(5) the dilemma confronting the Commission of determining an appropriate role which balances its obligations to resolve disputes concerning superannuation together with its articulated desire to assist in the development of a rational and sensible framework for retirement incomes on the one hand, with the constraints arising from both the recently enacted legislation and the limits on its jurisdiction (particularly as regards non-unionists) on the other; and

(6) a background where there is at least some doubt attending the continued involvement of the Commission in some aspects of superannuation having regard to the legislation dealing with what is essentially the same subject matter.

The Commission concluded by requesting the Commonwealth to convene a conference to discuss the problems for the future development of superannuation [Print K9700, pp. 31-32].

Since the October 1993 decision:

(1) The Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993 have been enacted;

(2) The Industrial Relations Reform Act 1993 has been enacted;

(3) A conference, chaired by the Treasury, in relation to superannuation was held in Melbourne on 28 March 1994;

(4) On 28 June 1994, the Treasurer, the Hon Ralph Willis MP, issued a statement on superannuation policy and a statement of measures proposed by the Government; and

(5) On 16 August 1994 a Full Bench of the Commission gave its decision in Review of Wage Fixing Principles August 1994 (the August 1994 decision) [Print L4700].

We will mention these matters again later in this decision. We add that on 24 November 1993 a Full Bench of the Commission (Munro J, Harrison DP and Holmes C) issued a decision [Print L0025] on the merits of the Shell Group superannuation dispute, upon which the High Court had ruled as to jurisdiction in its judgment referred to earlier.

Superannuation is currently provided for in many awards of the Commission. Some of these awards deal with superannuation only; others include superannuation together with other matters. Award provisions typically require an employer to contribute, in respect of an employee, 3% of the employee's ordinary time earnings into a specified superannuation fund or funds. There is, however, considerable variation in award provisions. For instance, some require the payment of a "flat dollar" contribution rather than a percentage and some make provision in relation to employees joining a superannuation fund.

In the August 1994 decision the Commission said:

"Superannuation

> It will be noted that the Statement of Principles makes no reference to Superannuation. Superannuation is the subject of proceedings before another Full Bench of the Commission. Pending the decision in that matter the principle as established by the October 1993 decision will continue to apply." [Print L4700, p. 35]

In the Statement of Principles attached to the August 1994 decision, the Commission dealt with Test Case Standards as follows:

> "Test case standards established and/or revised by the Commission may be incorporated in an award. Where disagreement exists as to whether a claim involves a test case standard, those asserting that it does must make and justify an application pursuant to s.107. It will then be a matter for the President to decide whether the claim should be dealt with by a Full Bench." [Print L4700, p. 42]

PART 2 - INDUSTRIAL RELATIONS REFORM ACT 1993

The Industrial Relations Reform Act 1993 (the 1993 Reform Act) which commenced, so far as is here relevant, on 30 March 1994, amended the Industrial Relations Act 1988 (the IR Act) in many ways. The 1993 Reform Act was extensively dealt with in the August 1994 decision and, in this present decision, we do no more than state that, as a result of the 1993 Reform Act, the emphasis of the IR Act is now squarely on direct bargaining with the role of awards altered to acting as a safety net of minimum wages and conditions of employment underpinning such bargaining.

PART 3 - SUPERANNUATION LEGISLATION

The Australian Parliament has enacted a substantial amount of legislation relating to superannuation relevant to the issues before us, including:

(a) Superannuation Guarantee (Administration) Act 1992 (the SGA Act);

(b) Superannuation Guarantee Charge Act 1992 (the SGC Act);

(c) Superannuation Industry (Supervision) Act 1993 (the Supervision Act);

(d) Superannuation (Resolution of Complaints) Act 1993 (the Complaints Act); and

(e) Section 90A of the IR Act (introduced in 1992).

Before referring to the SGA Act and the SGC Act we refer briefly to the Supervision Act and the Complaints Act.

The Supervision Act includes detailed and extensive provisions for the prudent management of certain superannuation funds and for their supervision by the Insurance and Superannuation Commissioner. A superannuation fund which is a complying superannuation fund under the Supervision Act is eligible for concessional taxation treatment. To become a complying fund, a fund must be a regulated superannuation fund under the Supervision Act and must comply with the Supervision Act with respect to matters which include operating standards, governing rules, borrowing rules, lending rules, in-house asset rules, equal representation rules and trustee, investment manager, actuary and auditor standards. We draw particular attention to Part 9 of the Supervision Act which provides for equal representation of employers and members in what are called "standard employer-sponsored funds".

The Complaints Act provides a mechanism for the resolution of specified types of complaints about the decisions of trustees of superannuation funds and certain other funds.

We turn now to the SGA Act and the SGC Act. These Acts, in short, impose a tax, called "superannuation guarantee charge", on what is called "an employer's superannuation guarantee shortfall for a year". An employer, by providing the minimum specified level of superannuation support for employees, avoids having a superannuation guarantee shortfall for a year and thus having to pay superannuation guarantee charge. (In this decision we use the words "requirements of the SGA Act", or similar words. This is a shorthand way of referring to the minimum level of superannuation support an employer must provide to avoid having to pay superannuation guarantee charge under the SGA Act.)

The October 1993 decision contained an account of the way in which the SGA Act and the SGC Act operate as follows (including an addition we have made):

> "The following is a simplified account of the way in which the legislation operates and does not describe some of its complexities.
>
> The scheme establishes a minimum level of superannuation support which employers should provide for each of their employees. The minimum level of superannuation support, called the charge percentage, is calculated by reference to an employer's annual payroll. This minimum must be provided for each employee in order to avoid liability for the superannuation guarantee charge. A scale of payments is prescribed for the years 1992-1996. Until 1996 a different charge percentage is to be applied to employers with an annual payroll depending on whether it is more or less than $1 million. Thereafter the charge percentage is the same regardless of the employer's annual payroll. Detailed provisions are contained in the SGA Act to determine what a particular employer's annual payroll is.
>
> An employer, in calculating contribution requirements under the SGA Act, is not required to take into account certain salary or wages paid to employees. This includes salary or wages paid to an employee over 65 years old, a non-resident employee for work done outside Australia, a resident employee by a non-resident employer for work outside Australia,

a part-time employee (i.e. employed to work not more than 30 hours per week) under 18 years old, certain exempt persons (e.g. members of Reserve Forces), and salaries or wages of less than $450 in a month. Section 15 of the SGA Act provides that the maximum contribution base for a contribution period in the 1992-93 year for the purposes of calculation is $40,000. The section provides for the adjustment of this figure in future years.

The minimum employer support is measured against an employee's 'notional earnings base' which is defined in sections 13 and 14 of the SGA Act. In brief, where an employer was contributing to a superannuation fund prior to 21 August 1991 in accordance with an award, the notional earnings base is the employee's earnings under that award. Where an employer was not contributing to a superannuation fund under an award prior to 21 August 1991, but is currently contributing to a fund under an award, then the notional earnings base will be the earnings base provided in that award or, in any other case, ordinary time earnings. Superannuation Guarantee Rulings have been issued dealing with 'ordinary time earnings' and what should be included in such earnings. In the case of an employer who was, prior to 21 August 1991, making contributions under an award or law which related to the earnings of a standard employee, then that becomes the employee's notional earnings base.

Specific provisions are contained in the SGA Act to deal with contributions that are made to a defined benefit superannuation scheme. We do not intend to detail these provisions.

An employer's contributions will only count for the purposes of the scheme if they are made to a complying fund. This is defined in the SGA Act as being a complying fund for the purposes of the Income Tax Assessment Act 1936. That, in turn, requires the fund to have satisfied certain conditions in the Occupational Superannuation Standards Act 1987.

At the end of each year a determination is made whether an employer has a superannuation guarantee shortfall in respect of an employee. This is assessed by calculating the difference between the superannuation support actually provided for that employee during certain contribution periods and the required level of support in accordance with the SGA Act. If there is a shortfall, a charge, calculated in accordance with the SGC Act, is imposed. Additionally, an amount of interest is calculated nominally representing earnings that would have accrued had the appropriate superannuation payments been made on behalf of the employee. The charge is paid to the Commissioner of Taxation who administers the scheme.

The SGA Act also provides for certain penalties that may apply, an example of which is the late payment of the charge. Upon receipt of the charge, and without detailing any amounts, the Commissioner may retain, (an administration component and penalties), the Commissioner is required to pay the shortfall component to a complying superannuation fund nominated by the employee for the benefit of the employee or, consistent with regulations made under the SGA Act, make arrangements to pay the shortfall component to a complying fund for the benefit of the employee. That fund may not be a fund specified in the relevant award."
[Print K9700, pp. 27-28]

Having set out the above account from the October 1993 decision, and in order to emphasise the detail and complexity of the SGA Act, we draw particular attention to the following sections of it:

. Sections 13 and 14 which deal with the meaning of "notional earnings base"; in particular, the references in these sections to the position where the employer is contributing to a superannuation fund in accordance with an industrial award (e.g. ss.13(1)(a) and 14(1)(a)) and the availability, in the circumstances specified, of an earnings base prescribed by an industrial award.

. Section 15 which specifies a maximum contribution base for a contribution period. The maximum contribution base for a contribution period in the 1992-93 financial year was $40,000. A contribution period was then a specified period of 6 months (s.6(1)). The amount is indexed for years subsequent to the 1992-93 financial year. It should be noted, however, that from the beginning of the 1993-94 financial year a contribution period is a specified period of 3 months (s.6(1)).

. Section 16 which provides that superannuation guarantee charge imposed on an employer's superannuation guarantee shortfall for a year is payable by the employer.

. Section 17 which provides:

"If an employer has one or more individual superannuation guarantee shortfalls for a year, the employer has a superannuation guarantee shortfall for the year worked out by adding together:

(a) the total of the employer's individual superannuation guarantee shortfalls for the year; and

(b) the employer's nominal interest component for the year; and

(c) the employer's administration component for the year."

(Note that what is meant by "nominal interest component" is explained in s.31 and what is meant by "administration component" is explained in s.32.)

. Section 19 which deals with an employer's individual superannuation guarantee shortfall in respect of an employee for the 1993-94 financial year and subsequent years.

. Section 20 which prescribes the charge percentages for a person who was an employer for the whole of the 1991-92 financial year. These are set out below. Column A specifies the charge percentages where the employer's national payroll for the base year (the 1991-92 financial year) exceeded $1,000,000 and Column B specifies the charge percentages where the employer's national payroll for the base year (the 1991-92 financial year) did not exceed $1,000,000:

Financial Year	Percentage	
	Column A	Column B
1992-93 (1 July - 31 December)	4	3
1992-93 (1 January - 30 June)	5	3
1993-94	5	3
1994-95	5	4
1995-96	6	5
1996-97	6	6
1997-98	6	6
1998-99	7	7
1999-2000	7	7
2000-01	8	8
2001-02	8	8
2002-03 and subsequent years	9	9

. Section 21 which prescribes the charge percentages for a person who was not an employer for the whole of the 1991-92 financial year.

. Sections 22 and 23 which provide, in applicable circumstances, for the reduction of the charge percentages prescribed in ss.20 and 21.

. Section 25A which provides that certain contributions specified in an industrial award as an amount of money are to be taken to be paid in accordance with an industrial award that specifies a notional earnings base.

. Section 26 which provides:

> "(1) Any period in respect of which excluded salary or wages are paid by an employer to an employee is not, for the purposes of section 22 or 23, to be taken into account as a period for which the employee is employed by the employer.
>
> (2) For the purposes of subsection (1), excluded salary or wages are salary or wages that, under section 27 or 28, are not to be taken into account for the purpose of making a calculation under section 18 or 19."

. Section 27 which provides:

> "(1) The following salary or wages are not to be taken into account for the purpose of making a calculation under section 18 or 19:
>
> (a) salary or wages paid to an employee who is 65 or over;
>
> (b) salary or wages paid to an employee who is not a

resident of Australia for work done outside Australia;

(c) salary or wages paid by an employer who is not a resident of Australia to an employee who is a resident of Australia for work done outside Australia;

(d) salary or wages paid to an employee who is a prescribed employee for the purposes of this paragraph;

(e) salary or wages prescribed for the purposes of this paragraph.

(2) If an employer pays an employee less than $450 by way of salary or wages in a month, the salary or wages so paid are not to be taken into account for the purpose of making a calculation, in relation to the employer and the employee, under section 18 or 19."

(Section 18 - to which we have not previously referred - relates to the 1992-93 financial year).

. Section 28 which provides:

"Salary or wages paid to a part-time employee who is under 18 are not to be taken into account for the purpose of making a calculation under section 18 or 19".

. Part 8 (ss.63-71) which deals with the way the Commissioner of Taxation is to deal with the "shortfall component" (defined in s.64) of the payment of superannuation guarantee charge in relation to a particular employer.

We should mention that the SGA Act, in contrast with some award superannuation provisions, does not:

. exempt an employer from obligations with respect to employees who have not completed a qualifying period of employment, or who refuse or fail to join a superannuation fund; or

. specify by name any superannuation fund into which an employer's contributions must be paid.

An award may also require an employer to pay contributions at specified intervals (e.g. monthly). This may be done indirectly (as a result of specifying the fund into which contributions must be paid where that fund requires payment to be made at specified intervals) or directly (by specifying the interval). Under the SGA Act, superannuation guarantee charge is imposed on an employer's superannuation guarantee shortfall in "the year". It should, however, be noted that in determining the amount of a superannuation guarantee shortfall for a year, the employer's notional interest component for the year is included (see ss.17 and 31 of the SGA Act).

In summary, the SGA Act and the SGC Act show that Parliament has established a new regime for the provision of minimum superannuation benefits to employees by their employers. As is noted in Part 4 - Proposed Amendments to Superannuation Legislation of this decision, further amendments to this legislation are proposed by the Commonwealth.

Section 90A of the IR Act provides:

> "In making a National Wage Case decision, the Commission must have regard to the operation of:
>
> (a) the Superannuation Guarantee Charge Act 1992; and
>
> (b) the Superannuation Guarantee (Administration) Act 1992."

Whilst this present case is not a National Wage Case, it deals with a subject matter (namely, what provisions, if any, awards of the Commission should contain with respect to employee superannuation) which has been dealt with in National Wage Case decisions since 1986. Even if s.90A had not been in the IR Act, the Commission would, of course, in dealing with superannuation in a case such as this, have regard to the SGA Act and the SGC Act.

PART 4 - PROPOSED AMENDMENTS TO SUPERANNUATION LEGISLATION

In Part 1 - Introduction of this decision we referred to the 28 June 1994 statement made by The Treasurer, the Hon Ralph Willis MP, on superannuation policy and the statement and measures proposed by the Government. This statement of measures contains this passage:

> "Clarification of the Legal Jurisdiction of the Australian Industrial Relations Commission.
>
> With the enactment of the Superannuation Guarantee (Administration) Act 1992 (SGAA), some doubt has been raised about the powers of the AIRC to continue to arbitrate on superannuation matters, at least to the extent it traditionally has done. The issue gained prominence in the context of the AIRC's 1993 Review of the Wage Fixing Principles wherein some employer groups claimed, in particular, that the Commission's powers were now circumscribed by the fact that '. . . generally the Commission has no jurisdiction to make an award that is inconsistent with an Act of the Commonwealth Parliament . . .'
>
> 2. The issue has assumed particular significance in regard to the power of the Commission to continue to arbitrate on disputes about the superannuation fund, or funds, to which employers must contribute in satisfying their award obligations. Whereas the SGAA allows contributions to be made to any 'complying' superannuation fund, most (federal) awards specify a more limited number of funds to which employers must contribute.
>
> 3. The Government's policy position has always been very clear in its intent that the SGAA complements, rather than replaces, award superannuation provisions. In other words, the intent is that the SGAA should establish minimum standards of superannuation support leaving parties free to negotiate (and the AIRC to arbitrate) higher standards.

. The Government proposes to insert an 'objects' or equivalent clause in the SGAA to make clear the Government's policy intent that, unless otherwise expressly provided for, the Act does not affect the AIRC's jurisdiction to consider superannuation issues. (At the same time, the amendment proposed will not purport to increase the jurisdiction of the AIRC to consider superannuation issues beyond the position that existed prior to the SGAA's enactment.)"

We have also had regard to the fact that the Treasurer stated that the Government proposes to make other legislative changes including:

. deeming that the payment of the superannuation guarantee charge shall also satisfy any equivalent award obligation with respect to the employee in question; and

. having regard to certain problems relating to "flat dollar" contributions under awards, providing that the amount of the contribution, rather than the amount specified by the award, is measured against the "standard employee" earnings base.

PART 5 - SUPERANNUATION CONFERENCE OF 28 MARCH 1994

As noted in Part 1 - Introduction of this decision a conference, chaired by the Treasury, in relation to superannuation was held in Melbourne on 28 March 1994. We attach to this decision a copy of the "Summary of Discussion" prepared by the Commonwealth relating to the conference. (We have, from this "Summary of Discussion", deleted four attachments and the references to them in the summary. These attachments are the agenda, a list of participants, a draft superannuation principle tabled by the Australian Chamber of Commerce and Industry (ACCI) and individual position statements.)

We draw attention to the comment on the last page of the "Summary of Discussion" that the conference noted that absorption was "not an issue in contention".

PART 6 - THE SUBMISSIONS

We now turn briefly to the submissions of the parties. (We do not here deal with submissions concerning the position of non-union members arising from the judgment of the High Court in Re Financial Sector Union of Australia; Ex parte Financial Clinic (Vic) Pty Ltd and others [(1993) 178 CLR 352]. We deal with that issue, including the parties submissions, in Part 9 - Non-Union Members of this decision.)

The submissions of the Australian Council of Trade Unions (ACTU) and the Governments of the Commonwealth, Queensland and the Australian Capital Territory were similar. In summary they were:

(1) that, despite the enactment of the SGA Act and the other superannuation legislation, the Commission should continue to exercise jurisdiction in relation to superannuation disputes;

(2) that the SGA Act and the other superannuation legislation was designed to work in tandem with award superannuation;

(3) that there should be no explicit principle determined by the Commission in relation to superannuation, but that the Commission should continue to determine industrial disputes about the delivery of superannuation benefits in accordance with existing "conventions". (As to such "conventions", see Part 7 - Superannuation "Conventions" of this decision);

(4) that any award safety net with respect to superannuation should include, not only the SGA Act minima, but also existing and future award provisions relating to the delivery of superannuation, e.g:

. specification of fund or funds into which contributions are to be paid;

. thresholds of employee earnings below which contributions are not required to be paid; and

. specification of frequency of payment.

The submissions of ACCI, The Australian Chamber of Manufactures, Metal Trades Industry Association of Australia, National Farmers Federation, Business Council of Australia, and the Governments of New South Wales, South Australia, Tasmania, Victoria and Western Australia were broadly similar. They sought that the Commission replace the existing superannuation principle with a principle in the following or similar terms:

"(a) The Commission will review superannuation provisions in an award and shall, subject to this principle, remove all superannuation provisions from the award other than a reference in a standard form* to the existence of obligations under the Superannuation Guarantee legislation, unless special and extraordinary circumstances are shown justifying their retention.

*[The parties note that the Superannuation Guarantee legislation requires employers to make superannuation contributions with respect to their employees.]

(b) The Commission shall on the submission of the relevant employer(s) retain superannuation provisions relating to choice of funds and notional earnings base applicable under the Superannuation Guarantee legislation. Provided than an employer may seek an exemption from an existing choice of funds provision where that employer contributes to a fund in respect of other employees under the terms of an award.

(c) Provisions relating to choice of funds shall be amended to confine their operation to union members. However a party to the award may apply for the retention of their application to employees not members of a trade union on the grounds that:

(i) special circumstances exist which consistent with the High Court decision in the Financial Clinic Case [Re Finance Sector Union of Australia; Ex parte Financial Clinic (Vic.) Pty Ltd and others, Full High Court, 1 July 1993] provide the Commission with jurisdiction with respect to particular

employees not members of a union; and

(ii) this is merited in the circumstances.

(d) The Commission will award no new provisions relating to employer superannuation contributions other than the above, whether by consent or arbitration."

The terms of the principle sought generally encapsulate the submissions of those seeking it.

The Government of New South Wales drew our attention to s.180 of the Industrial Relations Act 1991 (NSW) (the NSW Act) and suggested that it might be "woven in" to any principle we decided to adopt. Section 180(1) of the NSW Act provides:

"If an award or agreement requires an employer to pay contributions to a specified superannuation fund for the purpose of providing superannuation benefits to or in respect of an employee of the employer, the required contributions may, despite the award or agreement, be paid to a complying superannuation fund nominated for the time being by the employee and approved by the employer."

The Government of Victoria submitted that the proposed principle should be altered by replacing the words "under the terms of an award" at the end of paragraph (b) with the words "or where payments will be made to employees that are more beneficial than those in the Superannuation Guarantee legislation".

The Women's Electoral Lobby submitted that the Commission should retain its role in relation to superannuation, referred to the Commission's statutory duty to prevent specified forms of discrimination and submitted that equal remuneration includes superannuation.

PART 7 - SUPERANNUATION "CONVENTIONS"

The ACTU submitted that there existed a number of "conventions" (the ACTU's term) with respect to the provision of superannuation by the Commission. The ACTU sought the continuation of these "conventions".

The ACTU in its written submission submitted that the "conventions" were:

". ISC approval/complying funds;

. multi-employer schemes to promote true/no cost portability;

. avoidance of a multiplicity of schemes within a single workplace;
and

. equal representation of unions and employers on Trustees Boards."

The ACTU said that these "conventions" were derived from certain passages from the Superannuation section of the National Wage Case March 1987 decision [Print G6800; (1987) 304 CAR 452] and from various subsequent Commission decisions.

The passages referred to in the National Wage Case March 1987 decision are:

> "Without wishing to prejudge the issue there are a number of comments we consider desirable to make. The first is that any fund which complies with the Commonwealth's Operational Standards for Occupational Superannuation Funds and which has received the appropriate preliminary listing for taxation purposes from the Commissioner for Occupational Superannuation, could be determined as an appropriate fund by the Commission. The second is that it seems reasonable that no employer should be forced to make contributions for its employees to a multiplicity of superannuation funds. The third is that, given the mobility of labour, multi-employer funds controlled jointly by employers and unions may be preferable to individual funds and more likely to fulfill the basic purpose of superannuation for the majority of employees in particular situations. A number of such funds have been developed."

and

> "There are two other matters requiring comment. The first concerns the treatment of casual workers. The CAI submitted that employers should not be required to make superannuation payments on behalf of a casual worker in respect of any day when that employee works less than the full daily hours. The ACTU argued that appropriate arrangements have already been made in respect of casual workers in a number of areas of industry and there was no reason why this could not continue. We agree that there should be scope for coverage of casual workers. However, because of problems of definition of the term casual in different awards, we consider this matter should be further explored by the parties at the conference previously referred to." [Print G6800; (1987) 304 CAR 452]

There are many decisions of the Commission relating to superannuation handed down after the National Wage Case March 1987 decision. Many of these concern the specification of the fund or funds into which an employer must pay superannuation contributions.

With respect to superannuation "conventions", we have noted the decision dated 24 June 1994 of Commissioner Hodder in ANI Limited (Superannuation) Award 1987 [Print L4041]. It appears from that decision that a union submitted to the Commissioner that five "conventions" had emerged from decisions of the Commission dealing with occupational superannuation funds. These were essentially the four "conventions" in the ACTU's written submission (set out above by us) plus a fifth "convention" expressed to be:

> "That casuals have an entitlement to superannuation subject to certain requirements in relation to threshold wages being met".

The word "conventions" has various meanings. We do not, however, think it is an appropriate word to describe the views in relation to superannuation that have been expressed by the Commission in the National Wage Case March 1987 decision and other cases. Nonetheless, the Commission, in determining superannuation applications, will have regard to its previous decisions with respect to the specification of the fund or funds into which employer superannuation contributions are to be paid.

PART 8 - EFFECT ON AWARD OBLIGATIONS OF PAYMENT OF SUPERANNUATION GUARANTEE CHARGE

We now deal with the position of employers who have an award obligation to pay superannuation contributions but who, because they have a superannuation guarantee shortfall, are required under the SGA Act to pay superannuation guarantee charge.

As mentioned in Part 3 - Superannuation Legislation of this decision, superannuation guarantee charge is imposed on an employer in respect of an employer's superannuation guarantee shortfall for a year. This charge is payable to the Commissioner of Taxation. What is called the "shortfall component" of a payment of superannuation guarantee charge is payable by the Commissioner of Taxation into a complying superannuation fund for the benefit of the relevant employees (s.65 of the SGA Act). (Where the employee is under 55 and has retired due to illness, the shortfall component is payable to the employee (s.66) and where the employee has died, the shortfall component is payable to the employee's legal personal representative (s.67).)

It appears to be the case that an employer's award liability to pay superannuation contributions is not, unless the award otherwise provides, affected by the payment by the employer of superannuation guarantee charge.

We note that this matter was one of the matters dealt with in the Treasurer's statement and proposals of 28 June 1994 referred to in Part 4 - Proposed Amendments to Superannuation Legislation of this decision. The proposals include that the Government proposes to amend the SGA Act, with effect from the date of assent to the legislation, to deem that the payment of the superannuation guarantee charge shall also satisfy any equivalent award obligation with respect to the employee in question.

In view of this proposal, we do not take the matter further at this time. It is, however, a matter that can if necessary be raised again.

PART 9 - NON-UNION MEMBERS

The High Court in Re Finance Sector Union of Australia; Ex parte Financial Clinic (Vic) Pty Ltd (Financial Clinic) [(1993) 178 CLR 352] held, by majority, that the claim before the Court in that matter, namely a claim made by a union against employers as to the identity of the superannuation fund to which the employers should contribute in respect of employees who were not members of the union, did not give rise to an industrial dispute within the IR Act.

This judgment accordingly raises questions as to existing and future award provisions requiring employers to make superannuation contributions with respect to non-union members into a specified fund or funds. In particular it raises questions:

(1) as to the validity of dispute findings made by the Commission in cases where claims were made by a union against employers that the employers pay superannuation contributions into a specific fund or funds in respect of employees who are not members of the union; and

(2) the validity of award provisions based on such dispute findings.

In Financial Clinic the majority said (we have added paragraph numbering for ease of reference):

"1. A trade union certainly has an industrial interest in ensuring that non-members receive the same level of employment benefits as employees who are its members. Thus, if members are to receive the benefit of superannuation contributions, it has an industrial interest in ensuring that non-members also receive superannuation contributions in the same amount or at the same level, and a claim to that effect is one that may give rise to an industrial dispute.

2. Moreover, a trade union has a legitimate interest, by reason of its being a trade union, in the establishment and maintenance of superannuation schemes for the benefit of its members. That interest extends to the establishment of a single industry scheme to which all its members may belong. It also extends to ensuring the viability of any scheme with which it is associated.

3. Notwithstanding that the legitimate interests of a trade union with respect to superannuation are wide-ranging, its industrial interests do not, in our view, extend to specifying the identity of the fund to which superannuation contributions are to be made on behalf of employees who are not and never become its members, where the specification emanates from nothing more than a desire to bring about a situation in which there is a single industry superannuation scheme.

4. The identity of the fund to which superannuation contributions are to be made on behalf of employees who are not members of a union, standing alone, is not a matter that bears in any way on their employment position relative to that of union members. There may be circumstances where it would, particularly if contributions were made in respect of non-members to a fund under the rules of which money may be invested in or lent to the employer or in which the employer has a beneficial interest. In a case of that kind, if contributions on behalf of union members were paid to a fund with different rules, non-members would be employed on terms and conditions less favourable to them and less onerous to the employer than those applying to union members. A case of that kind would be covered by the comment of Dixon J. earlier referred to [R v Commonwealth Court of Conciliation and Arbitration; Ex parte Kirsch (1938) 60 CLR 507 at p. 537]. However, there is no suggestion that there is anything of that nature involved in this case. The only matter that was pointed to as the basis for the claims made was the desire of the A.I.E.U. that there should be a single superannuation scheme for the insurance industry.

5. Special circumstances aside, where an employer and non-member employees are agreed upon the identity of the superannuation fund to which the superannuation contributions in respect of non-members should be paid, a trade union will have no relevant industrial interest in preventing effect being given to their agreement. As already indicated, the broader aspirations of the union may well extend to a preference for one superannuation fund over another or,

> indeed, to the establishment of a superannuation fund by itself, alone or in association with an employer or employers. However, such broader aspirations will not, of themselves, suffice to make either a demand that an employer cease to pay superannuation contributions on behalf of non-member employees to the superannuation fund selected by agreement between them or a demand that the employees pay superannuation contributions to some other fund the subject of an industrial dispute between the union and that employer. The reason why that is so is that, in the absence of some special circumstance such as that given in the examples above, the identity of the fund to which contributions in respect of non-member employees are paid does not bear a sufficient relationship to the terms and conditions of employment of employees who are, or become, union members." [178 CLR at pp. 364- 365]

There is no dispute that the majority judgment in Financial Clinic does not mean that all dispute findings or award provisions of the type mentioned earlier are invalid. Each dispute finding and award has to be examined according to its own circumstances to determine whether or not, on the test that is to be derived from Financial Clinic, it is valid or not.

We accordingly turn to consider what test is to be derived from Financial Clinic. On this question the parties were divided. This difference of views goes to the meaning of the words "special circumstances" at the beginning of paragraph 5 of the passage quoted above from Financial Clinic.

The ACTU (and those supporting it on this matter) submitted that "special circumstances" should be found to exist in any case where an employer could not demonstrate that:

- no collateral benefit would be gained by the employer;

- non-union members would not receive lesser conditions of employment than union members; and

- union members would not suffer a deterioration of benefits or disadvantage. The ACTU also emphasised that Financial Clinic related to a case where the union claim to specify a particular fund emanated from nothing more than a desire to bring about a situation in which there is a single industry superannuation scheme (see paragraph 3 of the passage quoted above). The ACTU submitted that the prescription of an award fund is rarely, if ever, based solely on the desire to support a single fund.

ACCI (and those supporting it on this matter) submitted that "special circumstances" within Financial Clinic are very limited and that the effect of the judgment was to invalidate the great majority of award provisions directing employer superannuation contributions in respect of non-union members to a specified fund or funds. ACCI, in support of this view, relied on the one example given by the High Court of a "special circumstance"; namely, the case of a fund into which contributions for non-union members were paid which allowed money to be invested in or lent to the employer or in which the employer had a beneficial interest (see paragraph 4 of the passage quoted above). ACCI submitted that "special circumstances" did not go beyond this example.

In our view, "special circumstances" within Financial Clinic will fall somewhere between the two contending positions. The correct test to be applied, in our view, is that contained in the first sentence of paragraph 4 of the passage quoted above; i.e: Is the identity of the fund to which superannuation contributions are to be made on behalf of employees who are not members of a union, standing alone, a matter that bears in any way on their employment position relative to that of union members? If it is, it will, in our view, constitute a "special circumstance" within Financial Clinic. The test, of course, has to be applied according to the facts of each case.

PART 10 - AWARD SUPERANNUATION PROVISIONS

1 - INTRODUCTION

No party submitted that the Commission should vacate the field of superannuation and we do not propose to do so. In this respect we have, in particular, noted the statements about the Commission's role with respect to superannuation contained in the Treasurer's statement and the proposed measures of 28 June 1994 (referred to in Part 4 - Proposed Amendments to Superannuation Legislation of this decision).

There is, however, no doubt that the enactment of the SGA Act and the SGC Act has radically changed the role of the Commission with respect to superannuation. These Acts, as we have noted in Part 3 - Superannuation Legislation of this decision show that Parliament has established a new regime for the provision of minimum superannuation benefits to employees by their employers. This new regime is the major consideration for us in determining the role the Commission should now play in relation to superannuation.

In Part 3 - Superannuation Legislation of this decision we referred to sections of the SGA Act which do not require certain salary or wages to be taken into account for the purpose of making a calculation under ss.18 or 19; namely (in abbreviated form) salary and wages:

- paid to an employee who is 65 or over;
- paid to certain non-residents of Australia;
- paid by certain non-residents of Australia;
- paid to prescribed employees;
- which are prescribed;
- of less than $450 in a month (paid to an employee); and
- paid to a part-time employee who is under 18.

These provisions may, in particular cases, result in a difference between superannuation award provisions and the requirements of the SGA Act.

Also, in Part 3 - Superannuation Legislation of this decision we mentioned some of the matters in respect of which the SGA Act does not provide, but which may be provided for in existing superannuation awards; namely:

. exemptions from payment of employer contributions with respect to employees who have not completed a qualifying period of employment, or who refuse or fail to join a superannuation fund; and

. the specification by name of any superannuation fund into which an employer's contributions must be paid.

Also, we noted in Part 3 - Superannuation Legislation of this decision, that an award may require an employer to pay superannuation contributions at specified intervals (e.g. monthly).

Finally, in Part 3 - Superannuation Legislation of this decision we referred to ss.13 and 14 of the SGA Act which deal with "notional earnings base"; in particular, the references in those sections to situations where the employer is contributing to a superannuation fund in accordance with an industrial award.

We have, in Part 9 - Non-Union Members of this decision, dealt with the judgment of the High Court in Financial Clinic in relation to award prescription of a fund into which contributions for non-union members are to be paid.

2 - AWARD SUPERANNUATION PROVISIONS

The preceding comments emphasise that the enactment of the SGA Act and the SGC Act has established a new regime with respect to employer provided superannuation. It is in the context of this new regime that the approach to be taken by the Commission with respect to superannuation must be considered.

The SGA Act and other superannuation legislation are extremely complex. We are concerned that an award provision which did not repeat in full the relevant provisions of the SGA Act would, having regard to the length and complexity of those provisions, run the risk of differing from them and of being misleading. To specify even the charge percentage prescribed by the SGA Act is not simple. The charge percentage applicable to a specific employer at a specific time will depend on the applicability to that employer at that time of the various circumstances affecting charge percentages specified in ss.20-23 of the SGA Act.

We do note, however, that award superannuation provisions, although their terms vary considerably, usually contain three elements:

(1) Specification of quantum of employer contributions

By "employer contributions" we mean the superannuation contributions the employer must pay so as to avoid becoming liable to pay superannuation guarantee charge under the SGA Act; see Part 3 - Superannuation Legislation of this decision.

Award superannuation provisions will usually impose an obligation on the employer to pay superannuation contributions of a specified quantum expressed as either a percentage of employee earnings or as a "flat dollar" amount.

(2) Specification of categories of employee in respect of which contributions are, or are not, to be paid

For example, while contributions are usually required to be paid with respect to full-time employees, they may not be required to be paid in respect of:

. casual employees;

. part-time employees;

. employees who have not completed a qualifying period of employment;

. employees paid less than a specified amount.

(3) Specification of fund

A specification of the superannuation fund or funds into which employer contributions (in whole or in part) must be paid.

With all the factors referred to above in mind, we turn to the approach the Commission will take to applications with respect to award superannuation provisions.

(1) Applications to vary award provisions so far as they relate to:

- specification of quantum of employer contributions; and

- specification of categories of employee in respect of which contributions are, or are not, to be paid.

(a) If the application in any respect seeks:

(i) a greater quantum of employer contributions than required by the SGA Act; or

(ii) that employer contributions be paid in respect of a category of employee in respect of which the SGA Act does not require contributions to be paid;

the application will be dealt with in the same way as an application above the award safety net of wages and conditions under the August 1994 decision. In this respect the Statement of Principles attached to the August 1994 decision says:

> "Generally an application to make or vary a minimum or paid rates award for wages and/or conditions above the award safety net shall be referred to the President for consideration as a special case. A party seeking a special case must make an application pursuant to s.107 supported by material justifying the matter being dealt with as a special case. It will then be a matter for the President to decide whether it is to be dealt with by a Full Bench. Exceptions to this process are applications which fall within the

provisions in the Statement of Principles dealing with a Consent Award or Award Variation to Give Effect to an Enterprise Agreement and with a First Award and Extension to an Existing Award." [Print L4700, pp. 44-45]

(b) If the application does not come within paragraph (a), the Commission (subject to paragraph (c)) will:

(i) Vary the award by inserting a clause stating:

"Superannuation Legislation

The subject of superannuation is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties."

(ii) If appropriate, ensure that the award contains a specification of an employee's earnings (e.g. "ordinary time earnings") which, for the purposes of the SGA Act, will operate to provide a "notional earnings base".

(iii) If the award is to continue to prescribe a "flat dollar" amount of employer contributions, ensure that appropriate amounts are inserted so as to give effect to the levels of contribution required from time to time under the SGA Act.

(c) The Commission may award provisions which differ from those in (b)(i), (ii) or (iii):

(i) By consent; or

(ii) In the absence of consent, by arbitration, provided the Commission is satisfied that there are particular factors warranting the awarding of different provisions. Such factors may include:

- the wishes of the parties;
- the nature of the particular industry or enterprise;
- the history of the existing award provisions; and
- relevant decisions of the Commission establishing superannuation principles.

Before any different provisions are awarded, either by consent or arbitration, the Commission must be satisfied, on expert evidence, that the award to be made will not contain requirements that would result in an employer not meeting the requirements imposed by the SGA Act.

(2) Applications to vary award provisions so far as they relate to specification of fund

If the application seeks the specification of the fund or funds into which employer contributions (in whole or in part) are to be paid, it will not be regarded as a claim above the safety net or award wages and conditions.

Any specification of a fund will carry with it the obligation on an employer to pay contributions at such intervals (e.g. monthly) as are required by the fund.

In determining applications as to specification of fund, the Commission will, as appropriate:

(a) ensure that any fund specified by it is one into which payment will meet the employer's obligations under the SGA Act;

(b) with respect to contributions for non-union members, give effect to the judgment of the High Court in Financial Clinic. This requires the Commission to consider whether, in the circumstances of the matter before the Commission, there are "special circumstances" within Financial Clinic. This matter, and our view as to the meaning of "special circumstances" are dealt with in Part 9 - Non-Union Members of this decision;

(c) have regard to the Supervision Act (see Part 3 - Superannuation Legislation of this decision) which provides for the prudent management of certain superannuation funds and for their supervision by the Insurance and Superannuation Commissioner. In particular, the requirement with respect to equal representation of employers and members on what are called "standard employer-sponsored funds" (Part 9 of the Supervision Act) should be noted; and

(d) have regard to previous decisions of the Commission with respect to the specification of a fund or funds.

(3) Applications for new award provisions

The Commission may establish new award superannuation provisions consistent with the above approach.

(4) General

(a) Because of the variety of existing award superannuation provisions and the impact and complexity of the SGA Act, all applications to the Commission may not be capable of being dealt with in accordance with the approach set out above. In any such case it may be appropriate for an application to be made for a reference under s.107 of the IR Act; and

(b) The Superannuation Conference of 28 March 1994 noted that absorption was not an issue in contention; see Part 5 - Superannuation Conference of 28 March 1994 of this decision.

3 - CONCLUSION

In the Statement of Principles attached to the August 1994 decision, the Commission said:

> "The Industrial Relations Act 1988 (the Act) now provides for an industrial relations system which promotes enterprise bargaining about wages and conditions of employment within the framework of an award system, which provides a safety net of secure, relevant and consistent wages and conditions of employment." [Print L4700, p. 37]

What we have said above in relation to award superannuation provisions is based on the new regime introduced by the enactment of the SGA Act and the SGC Act which prescribe the safety net with respect to superannuation upon which enterprise bargaining must be based. If these Acts were to be repealed, or amended in a way which diminished or removed that safety net, the matter of award superannuation provisions could be reconsidered by the Commission.

PART 11 - THE CLAIMS BEFORE US

The claims before us are referred back to the head of each appropriate panel.

ATTACHMENT

SUMMARY OF DISCUSSION

SUPERANNUATION CONFERENCE
MELBOURNE 28 MARCH 1994

In its October 1993 decision in the Review of the Wage Fixing Principles, the Australian Industrial Relations Commission (AIRC) called on the Government to convene a conference of the relevant industrial parties to address problems associated with the relationship between award superannuation and the Superannuation Guarantee (SG).

The conference, chaired by the Treasury, was held in Melbourne on 28 March 1994. The focus of the conference was on exploring the scope for agreement among the industrial parties on the future role of the AIRC in superannuation and, in particular, on issues involved in the interaction between award superannuation and the SG.

OPENING STATEMENTS

The Minister Assisting the Minister for Industrial Relations, the Hon Gary Johns MP, outlined the Government's broad policy perspective on these issues. In introducing the SG the Government had several objectives including spreading a minimum superannuation entitlement more broadly across the workforce, improving employer compliance in meeting superannuation obligations and providing for improvement in minimum entitlements over time. The Government's intention was that the SG should complement rather than replace award superannuation.

A number of parties made opening statements outlining their respective positions. There was general recognition of superannuation as an important element of retirement incomes policy. However there was a range of views regarding the appropriate mechanism to deliver superannuation entitlements.

Some parties considered that minimum superannuation entitlements should be provided either through the SG or the award system and that there was no need for two regulatory schemes. Their preferred approach was to provide additional flexibility in the SG legislative framework with the AIRC vacating the superannuation field.

Some parties considered that the dual regulatory approach led to administrative complexities and "double jeopardy" and that the SG should provide the prime regulatory framework. In special circumstances, where sought by the parties, award superannuation might deal with particular issues such as choice of fund and earnings base.

A draft "Superannuation Principle" was tabled by ACCI during the course of the discussions.

Other parties considered that award superannuation provided an avenue to deliver SG superannuation entitlements in an orderly and equitable way. In particular it should continue to deal with matters such as choice of fund on which the SG was silent. Such an approach was consistent with the ongoing

role of the Commission in dispute resolution and consistent with Government policy as stated at the introduction of the SG. Where technical difficulties and inconsistencies exist in the interaction of award superannuation provisions and the SG these should be addressed within the existing award system.

SPECIFIC ISSUES

The parties to the conference agreed that, without prejudice to the opening positions put by the parties, a number of more specific issues relating to the interaction of award superannuation and the SG should be discussed on the assumption that the Commission continues to operate in the field of award superannuation.

Contribution Rates

There was a general agreement that the SG establishes the minimum standard for superannuation and that the current situation of different contribution levels for award superannuation and the SG was a source of confusion and led to certain administrative complexities.

It was agreed that the differences between the level of superannuation contribution required by awards and the SG caused problems which should be dealt with.

There was no agreement over the way to remedy the problem with some parties supporting an approach which had awards prescribing the SG levels while other parties considered that an approach of referring to the SG in the award was appropriate.

Earnings Bases

The SG legislation currently gives explicit recognition to earnings bases contained in awards, including some flat dollar amounts. Some parties suggested that the status quo should remain while others considered that the only earnings base provisions in awards should be those retained by consent of the employer. Other parties considered that if there were difficulties arising from the flat amounts in awards, these could be addressed on an individual basis over time. Others saw merit in the continuation of flat contributions if the parties to the relevant awards considered it appropriate.

Income Thresholds

For some parties income thresholds and qualifying periods and the treatment of small accounts were matters of greatest concern. They pointed to the large number of small account holders receiving little or no tangible benefit and supported a move to the threshold contained in the SG legislation.

Others noted that there should be a move towards consistency between thresholds and qualifying periods contained in awards and those in the SG legislation. However some parties indicated that this should not reduce existing rights of casual and part-time employees.

The conference noted that the issue of small accounts was being addressed in other forums and that measures introduced as a result of those considerations should address the problem. The problem of small accounts would also be ameliorated over time with the higher contribution rates provided for by the SG schedule.

Periodicity of Payments

The parties identified this as another area of inconsistency. There was a general agreement that a move towards greater consistency was desirable. Noting that the SG is scheduled to move to quarterly payments in July 1994, it was generally agreed that the standards established by the SG should be the maximum period for payment by employers. However some parties considered that awards should continue to prescribe a higher standard (e.g. monthly payment) where parties to the award agree.

Choice of Fund

No agreement was reached on this issue with a range of proposals being put by the parties. All parties recognised the dispute settling role of the Commission. Some parties proposed that this role continue to cover arbitration over the delivery of SG contributions while others placed a primary emphasis on determining appropriate funds by agreement. However there were different views, in particular over exemptions and over implications of the Financial Clinic Case for choice of fund matters in respect of non-union employees. Some consider the Financial Clinic Case meant that the award system has no role in relation to choice of fund issues for non-unionists unless special circumstances exist. Others considered the High Court decision reflected the particulars of the case and did not establish a prima facie invalidity of existing award choice of fund provisions in respect of non-union members. Each case would turn on the facts of the matter.

Absorption

The conference noted that this was not an issue in contention.

Where Employees Elect Not to Join a Superannuation Fund

There was agreement that a right of refusal is no longer relevant in the context of the SG.

THE FUTURE ROLE OF THE AIRC IN RELATION TO SUPERANNUATION

As noted above, some parties considered that the Commission should have only a minimal continuing role given the enactment of the SG, while other parties wanted a retention of the status quo of a comprehensive role.

CONCLUDING REMARKS

At the conclusion of the meeting it was agreed that participants would be afforded the opportunity to submit individual position statements.

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