



# Industrial Relations Commission of Australia

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**1356/1991 (20th December, 1991)**

## **Industrial Relations Commission Decision 1356/1991; [1991] 1356 IRCommA**

F115 Dec 1356/91 M Print K1037

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

[Industrial Relations Act 1988](#)

[Conciliation and Arbitration Act 1904](#)

[s.25](#) notification of industrial dispute

The Federated Furnishing Trade Society of Australasia

and

Burgess Furniture Pty Ltd and others  
(C No. 02108 of 1987)

THE FURNISHING TRADES (SUPERANNUATION) AWARD 1988(1)  
(ODN C No. 00567 of 1987)

Furnishing trade employees

Furnishing industry

COMMISSIONER TURBET

MELBOURNE, 20 DECEMBER 1991

Labour costs - superannuation - exemptions - award not to apply to respondents known as  **the Brethren** .

### DECISION

This decision arises from a notification by The Federated Furnishing Trade Society of Australasia (the society) directed at amending the Parties Bound and Exemptions clause of The Furnishing Trades (Superannuation) Award 1988 to align the employer respondency of the Superannuation award to the respondency list of the Furnishing Trades Award, 1981.(2) A number of companies are owned and controlled by persons who are members of the religious fellowship known as  **the**

**Brethren** →. They seek to be exempted from the provisions of the award.

Mr Hornsey and Mr Fysh explained that their adherence to the beliefs and practices of their religious calling prevents them from being members of, or even directly associating with organisations of employers or employees. They assert that these sincerely held attitudes do not allow them to be involved in the award making procedures prescribed by the [Industrial Relations Act 1988](#) and Industrial Relations Regulations.

Both Mr Hornsey and Mr Fysh submitted that their companies acknowledged the existence of industrial awards, and in respect of their employees who are generally members of ← **the Brethren** →, provided wages and conditions in accordance with or exceeding award standards. It was stated ← **that Brethren** → companies do not object to the principle of superannuation and are currently making payments to a superannuation fund which has been approved by the Insurance and Superannuation Commission at levels commensurate with those specified in The Furnishing Trades (Superannuation) Award 1988.

Commission's consideration

[Section 116](#) of the [Australian Constitution](#) guarantees the religious rights of Australian citizens. [Section 116](#) states:

(1)Print H1379 [F115]

(2)Print G0770 [F029]

"116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

It seems to me that the inclusion into an award of this Commission, whether explicitly or implicitly, of a provision demanding the adherence to a particular set of employment conditions upon persons who hold a sincere and conscientious religious belief against such an arrangement is contrary to rights guaranteed by [Section 116](#) of [the Constitution](#).

The award will therefore be varied by inserting into the Parties Bound and Exemptions clause the following:

"The provisions of this award will not apply to respondents and their employees who are members of the religious fellowship known as ← **the Brethren** → who contribute to an approved occupational superannuation fund at a rate equal to or exceeding that provided by this award."

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