

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3646 of 1992

IN THE MATTER OF an application by
the Minister administering the
Tasmanian State Service Act 1984
to vary the Tourism Tasmania Staff
Award

re Mainland allowances

COMMISSIONER GOZZI

HOBART, 17 January 1992

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: I'll take appearances, please.

MRS W. BURGESS: WENDY BURGESS, together with GREG BURGESS, appearing for the Minister administering the State Service.

COMMISSIONER GOZZI: Thank you.

MR C. SMYTH: CHRISTOPHER SMYTH appearing for the Tasmanian Public Service Association, if it please the commission.

COMMISSIONER GOZZI: Thank you. Mrs Burgess?

MRS BURGESS: Thank you, Mr Commissioner. First of all, the minister seeks leave to vary the Tourism Tasmania Staff Award in respect to clause 16 - Mainland Allowance; subclause (2) by deleting the amount shown and inserting in lieu thereof the amount as per our application.

The variation is in accordance with the existing formula, as per your decision T. No. 2599 and 2690 of 1990, dated the -

COMMISSIONER GOZZI: 2559?

MRS BURGESS: 2599.

COMMISSIONER GOZZI: Of - what year is it in?

MRS BURGESS: 1990.

COMMISSIONER GOZZI: Yes.

MRS BURGESS: And, 2690 of 1990. Both dated the 26th of February 1991. I can hand up an exhibit of that.

COMMISSIONER GOZZI: No. That's fine.

MRS BURGESS: Okay. And it reflects the median rental cost as per the Residential Property Market and the Real Estate Institute of Australia Index, and I will just hand up an exhibit of an extract from that page.

COMMISSIONER GOZZI: Exhibit B.1.

MRS BURGESS: Which follows the formula - do you want me to take you through the formula?

COMMISSIONER GOZZI: You can if you like.

MRS BURGESS: Okay. The formula for Sydney - if we do Sydney first. For Hobart, a two bedroom unit is 120, plus a 3 bedroom house is 145, equals 265 divided by 2 equals 132.5. For Sydney it's 165 for a 2 bedroom unit, \$210 for a 3 bedroom house. That equals 375 divided by 2 which is 187.5. Take the Hobart figure from the Sydney figure, 132.5 from 187.5 equals

55 per week, times 52 weeks, which equals 2,860, which you multiply the tax component of 1.702 which gives you a figure of 4868. And the same formula is calculated for every other capital city.

You'll notice that we haven't included Adelaide, because Adelaide actually has a reduction, and it is minus 221. So we prefer to leave Adelaide in, but with no monetary amount next to them for the award.

COMMISSIONER GOZZI: So, you want to amend your application to include Adelaide on here, do you?

MRS BURGESS: Well, Adelaide, yes. Just to leave that in, but no monetary amount showing against that.

COMMISSIONER GOZZI: So, Attachment 1 of your application, do you want me to add Adelaide?

MRS BURGESS: Yes, please.

COMMISSIONER GOZZI: And put 'nil' in the dollar column?

MRS BURGESS: Yes.

COMMISSIONER GOZZI: All right. Perth is also a nil amount, wasn't it, which was deleted some time ago?

MRS BURGESS: Yes. Only within the award at present there were the five - Sydney, Melbourne, Canberra, Brisbane, and Adelaide, so there is no figure for -

COMMISSIONER GOZZI: Yes. Why do you want to retain Adelaide? I mean, Perth - or Perth has now closed office, I suppose.

MRS BURGESS: Yes. But also Adelaide has a savings provision for 3 years, which there is a cover in the current Tourism Tasmania Award which go to -

COMMISSIONER GOZZI: And, in accordance with the savings provision it is still a nil amount for this year?

MRS BURGESS: That's right, but they will still get an amount under clause 16. They will still receive 1,166 until the allowances are exceeded by No. 2 - by paragraph 2. So that was why I wished to include Adelaide in it.

COMMISSIONER GOZZI: Well, hang on. If they are still getting an allowance by way of a savings provision, why should there be a nil amount there then?

MRS BURGESS: Because it fluctuates. The figures can fluctuate.

COMMISSIONER GOZZI: Yes, I know they fluctuate.

MRS BURGESS: And also to cover new employees so that next year if the Adelaide rate rises -

COMMISSIONER GOZZI: Yes, the formula currently produces a nil amount.

MRS BURGESS: That's right.

COMMISSIONER GOZZI: It currently in the award is 1166.

MRS BURGESS: Only for existing employees.

COMMISSIONER GOZZI: By virtue of the savings provision?

MRS BURGESS: That's right. Yes.

COMMISSIONER GOZZI: Oh, yes, we're looking at 1682, aren't we?

MRS BURGESS: 1166.

COMMISSIONER GOZZI: Yes, but the accommodation allowance that you're seeking to vary is in 16(a)((2) of the award, isn't it?

MRS BURGESS: That's right, yes.

COMMISSIONER GOZZI: Yes. So, the 664 that currently applies to Adelaide is a nil amount?

MRS BURGESS: That's right. Yes, a nil amount.

COMMISSIONER GOZZI: So, the 1166 really has got nothing to do with that, it is just from the previous formula?

MRS BURGESS: No. That's for existing employees only.

COMMISSIONER GOZZI: It's actually in my award; it is not subclause (b). Your application says subclause -

MRS BURGESS: Clause (a)(2).

COMMISSIONER GOZZI: Have you got your application there?

MRS BURGESS: Yes, I have.

COMMISSIONER GOZZI: I think that should be subclause (a)(ii). Do you agree with that?

MRS BURGESS: Yes, I agree with that.

COMMISSIONER GOZZI: Right. Now I am right.

MRS BURGESS: So, to conclude, I believe the application is in line with the commission's decision, and I ask that the variations be granted. Additionally, we would like to ask for the operative date to be the date of decision. If the commission pleases.

COMMISSIONER GOZZI: Yes. Mrs Burgess, the Melbourne allowance is down significantly from what it is. It was 2655, and it is now 442, is it?

MRS BURGESS: Yes, it is. Canberra is also down, as is Brisbane.

COMMISSIONER GOZZI: Well, Canberra is a lot closer to what it was; Canberra is 3452. It is just remarkable. And Brisbane is significantly down.

MRS BURGESS: Brisbane is down also to 442. I think it's -

COMMISSIONER GOZZI: And that's on the application of the formula?

MRS BURGESS: We - the application of the formula, which is I believe an agreed matter with the union, on the calculations only.

COMMISSIONER GOZZI: Yes. I don't think the formula is agreed, unless things have changed dramatically, Mr Smyth?

MR SMYTH: Not dramatically, Mr Commissioner.

COMMISSIONER GOZZI: But the calculations are agreed?

MR SMYTH: That's correct.

MRS BURGESS: Yes, the calculations are. It's because there was a large supply of rental accommodation in the '88-'89 investment boom, in combination with the reduced demand to soaring unemployment, this has led to that imbalance.

COMMISSIONER GOZZI: What's the real estate data, again, that you have got here?

MRS BURGESS: That's from the Real Estate Institute of Australia, and that gives you -

COMMISSIONER GOZZI: Yes - the period 1990 to '91.

MRS BURGESS: That's right; yes.

COMMISSIONER GOZZI: What's the period again, what are the periods again? From when in '90 to '91?

MRS BURGESS: It's the June quarter, September - so it is the March quarter in 1991 and the June quarter for 1991.

COMMISSIONER GOZZI: So, it must be -

MRS BURGESS: The June quarter is the last one we go on.

COMMISSIONER GOZZI: 1991.

MRS BURGESS: That's right.

COMMISSIONER GOZZI: What's the commencing quarter in 1990?

MRS BURGESS: 1990, is the June quarter in 1990 - for Sydney it was 160.

MRS BURGESS: So it goes June quarter - well, March, June September, December, March - we have got five quarters there.

MRS BURGESS: June, September, December, March, June, yes. And, in actual fact -

COMMISSIONER GOZZI: Shouldn't there be four quarters.

MRS BURGESS: Yes, but we are working off the last quarter - June to March, and we are working off the June 1991 quarter figure.

COMMISSIONER GOZZI: Well, if you have got the June quarter, that's one quarter; September, December, March, June.

MRS BURGESS: Well, it goes from June quarter 1990 to March quarter 1991, which gives you the June quarter, which we work off.

COMMISSIONER GOZZI: No, it doesn't give you the June quarter. The June quarter is still to come. The cut-off point would be the March quarter, wouldn't it - 1991?

MRS BURGESS: That's right. Yes.

COMMISSIONER GOZZI: So next time - well, no - in one of my previous decisions I did cover that just for the next adjustment. All I want to know is what this information represents; what the 12 month period is, commencing when and finishing when?

MRS BURGESS: Well, we are working off the June quarter only for 1991.

MR SMYTH: Mr Commissioner, I don't know if I can be much assistance here, but in the previous rental guides they only had to the June quarter. They had the June quarter '87, June quarter '88, June quarter '89, and it has been my understanding that the calculations for the formula - whichever formula was in vogue - were always taken at the June quarter of the particular year that we were dealing with.

COMMISSIONER GOZZI: I didn't think so.

MR SMYTH: I am happy to be corrected on that, Mr Commissioner, but that was certainly my understanding.

COMMISSIONER GOZZI: I thought it was a 12 month period -

MR SMYTH: A 12 month period.

COMMISSIONER GOZZI: - that we were looking at, and here we are looking at comprising four quarters.

MR SMYTH: And on that basis we took the June quarter 1991 for the calculations, the previous year we took the June quarter 1990, as I understand it, Mr Commissioner.

COMMISSIONER GOZZI: I suppose, to find out we may have to go back to the original decision, but for the purpose of this exercise I take it that the June quarter '91 is accepted as the cut-off point, is it?

MRS BURGESS: Yes, sir.

COMMISSIONER GOZZI: All right, well I had better make it clear that the cut-off point for this adjustment is the June quarter 1991, so that the next adjustment will commence with data for the June quarter - for the September quarter 1991.

Now, in the circumstances that Adelaide is saved in clause (a)(i), there is no need to retain Adelaide, I don't think, in (a)(ii).

MRS BURGESS: Except if there is existing, or if there is new employees, that would then cover them. They'd realise they'd get nothing this year, but they may next year be entitled to a monetary amount.

COMMISSIONER GOZZI: Doesn't the proviso in (ii) make that clear? Do you think somebody might think it has just been left off - inadvertently left off?

MRS BURGESS: I think that that would be what would happen.

COMMISSIONER GOZZI: Oh, fair enough. Well, this time around we will put 'nil' on there. Thank you, Mrs Burgess. Mr Smyth?

MR SMYTH: Mr Commissioner, alas - I don't know how to direct it otherwise - I believe the calculations as indicated by the government advocate are correct, and on that basis the association cannot raise too much of an argument.

However, Mr Commissioner, I can't let the matter rest there. Two points I would like to seek your guidance on. The first one is in relation to the government advocate's submission in relation to new employees. As I read your decision, on page 12 of your decision on matters T. No. 2559 and T.2690, page 12 of that decision -

COMMISSIONER GOZZI: Right. Page 12.

MR SMYTH: Yes; page 12, Mr Commissioner, on the eighth paragraph, which is the third paragraph on the bottom of that page, as I read that - and I am happy to be directed otherwise because I read something in the paper this morning, Mr Commissioner, which I had to be directed on as well, it says, and I quote:

To that end, new and existing employees who are entitled to the allowance are to continue to receive the level of allowance currently specified in accordance with the arrangement referred to above.

The point I am emphasising here, Mr Commissioner, is that 'new and existing employees'. Therefore, if you are transferred, a Hobart-based employee or a Tasmanian-based employee transferred to one of those particular locations you would also receive that allowance for the period of time as at that savings provision, until that savings provision expires, which is in, I think, 2 years time now.

COMMISSIONER GOZZI: Yes.

MR SMYTH: I don't know if that point needs to be clarified, but my understanding from the government's submission was that it wouldn't apply to new employees.

COMMISSIONER GOZZI: Yes, I think that's what was said.

MR SMYTH: I'm happy to be corrected otherwise if that's the case.

COMMISSIONER GOZZI: Yes. Thank you for bringing that to my attention.

MR SMYTH: There are some other points I would like to raise, Mr Commissioner, if that's with your leave, and that is, basically the association has some concerns about where the

new agreed formula, or the determined formula, is actually leading us.

I'm not going to go over all the arguments that were presented to you in - the last time. It would probably remind you of that other never-ending saga of the principals come directors of the TAFE colleges, but it is worth reminding, Mr Commissioner, just a brief history of the allowance as it has developed over the past few years, and to that end I have an exhibit for your perusal. Basically that details how the history of the allowance has fluctuated to a certain extent, and it also indicates on column 1990 - year 1990 -

COMMISSIONER GOZZI: Exhibit S.1.

MR SMYTH: Exhibit S.1. Thank you, Mr Commissioner. If you go through 1988, 1989, the third column along that top side is a 1990 variation as sought by the PSA at that time, and the 1990 decision was determined and the 1991 variation.

The point you make in relation to Melbourne, Mr Commissioner, is very valid, in your initial questioning of the government's advocate. The fluctuations are quite significant, and whilst I understand the purpose of the allowance is to reimburse costs associated with renting accommodation there were other aims of the allowance, and my concern is those other aims may not be being met - are not being met, or may not be met - that is, namely, to encourage staff in the Tasmanian offices to the mainland bureaux.

A point that was mentioned and stressed by the government's advocates in the last submissions on this matter. And may I add, Mr Commissioner, a point stressed by a legislative council review in its interim report presented in 1991, and I have that as an exhibit as well, Mr Commissioner, for your information. And I just -

COMMISSIONER GOZZI: S.2.

MR SMYTH: Thank you, Mr Commissioner. And I just read very briefly from one of the recommendations of that legislative council report. On the top of page 16 - I haven't photocopied the entire report, Mr Commissioner, but I have it here if you wish to peruse it.

On page 16 at the top, and I quote:

Tourism Tasmania must ensure that all travel centre staff receive adequate training, and that all are well informed about Tasmania.

A perception by the Tasmanian tourism industry of lack of familiarisation needs to be addressed.

Where possible, travel consultants should be Tasmanians.

Now, whilst I understand the department is doing a lot of work in the training area, the point I am really trying to make Mr Commissioner, is where it says, 'Where possible travel consultants should be Tasmanians'.

My concern, Mr Commissioner, is if the fluctuations in relation to the allowance continue, the prospect of Tasmanians wishing to go to Melbourne on an allowance of - as it currently would be if there was no savings provision - \$442 - may not be a great encouragement to them to in fact relocate to those particular capital cities, where I think - as I say this really without fear of contradiction - that the cost of living is significantly higher than perhaps those mental figures would indicate; particularly as they're taken from a wide range of Melbourne cities, and a wide range of Melbourne districts, not purely the central city.

On that basis, Mr Commissioner, I again quote, and I quote this time from Mr McCabe the minister's advocate in that same matter, the same case 2 years ago, and he said on page 27 of transcript:

I strongly advocate that the methodology for determining the allowance is no longer relevant and, therefore, a new method of determining appropriate allowances is now required.

I again can only echo those sentiments now, Mr Commissioner, I certainly didn't echo them at the time, but perhaps it appears as the rental differentials between Hobart and other capital cities continue to reduce, the members that I represent and the employees in the department are going to suffer quite considerably in either having to reduce their standard of living or, alternatively, not be encouraged to move to those particular locations, which is one of the aims of the department and also I guess from the legislative council's report one of the aims of government.

The prospect of recruiting, as I said before, Mr Commissioner, local staff from the mainland will be minimal and, furthermore, the current members are likely to have to try and find accommodation in the areas commonly set aside as swamps or park benches or, alternatively, they will have to travel enormous distances to find accommodation that equates to the level of allowance that's currently determined by the new formula.

It's obviously of extreme concern that the formula continues to reduce the rental differentials. And, whilst I concur with your thoughts about the formula of the previous case being to

the extent it was too large a differential, I am of the view that the rental costs that members are paying at the moment have not decreased to the extent that the real estate figures would indicate, and I can't give you from my discussions with our representatives over the phone one incidence of where the rents of the people who are renting accommodation has decreased, but I can certainly provide you with examples where the rents have actually gone up; particularly in the inner city area where most of those, or some of those staff employees live.

That aside, Mr Commissioner, the other point I would like to raise, if I have your indulgence, is the situation relating to Brisbane. Now Brisbane in the variations sought by the association in 1990 was to move to a figure of around 1740 - \$1,740. Prior to that Brisbane did not have an allowance paid in respect to differentials between median purchase price of a 2 bedroom unit or a 3 bedroom house.

In the commission's decision, utilising the new formula, Brisbane received an allowance to the level of 2,655, and may I pass on the thanks of the members in Brisbane, Mr Commissioner, when they received this unexpected, though not undeserved increase, as a result of your decision.

However, Mr Commissioner, there is a rub. Now the Brisbane allowance is to be reduced to the level of 442. Now, as I need not point out to you, this is a rather significant and fairly wild variation to the allowance as it was previously provided to those members, and those wild variations, or significant variations, was one of the very issues that you yourself in a very considered manner attempted to avoid.

And if I may quote from your decision of T. No. 2599 and 2690, Mr Commissioner, you state again on page 12:

However, I am concerned that employees in receipt of the allowance currently specified in the award are not disadvantaged in respect of the amount of money they have been receiving and which they may have budgeted on continuing to receive, having regard to the standard of accommodation they have secured.

Accordingly, I determine that the existing levels of allowances be maintained for a period of three years or until such time as the median rental cost exceeds the allowances in the award.

Now in that judgment, Mr Commissioner, you determined that the level of the existing allowance for all capitals would remain, except in Brisbane where the median rental base formula would be introduced.

In addition, Mr Commissioner, Brisbane was omitted from having access to a savings style provision in the amended award, where you state that the locations outlined in subclause (1)(a), Sydney, Melbourne, Canberra, and Adelaide, have a savings provision but, alas, not Brisbane.

COMMISSIONER GOZZI: Because they didn't need one.

MR SMYTH: At that time, Mr Commissioner.

COMMISSIONER GOZZI: That's right.

MR SMYTH: Absolutely correct. It would be the association's view this time around, Mr Commissioner, that should you agree to vary the award as presented by the minister's advocate, then it would be both fair, equitable, and nondiscriminatory to include a savings provision for Brisbane. That is, that it remains at its current level for a period of - dare I say it, 100 years - 3 years or, alternatively, now 2 years -

COMMISSIONER GOZZI: I thought you were going to say 100 years for a moment.

MR SMYTH: No, I -

COMMISSIONER GOZZI: Is that what you -

MR SMYTH: I think I must have been coughing, Mr Commissioner. I believe that that sort of savings provision is allowable under the wage fixing principles, and it would be in the public interest, and would guard against the very issues that you yourself were concerned about the last time this matter was before you.

As for the larger issue of the future of the allowance, Mr Commissioner, and the need for both the government and the association and, in fact, the commission to find a formula that suits all purposes surrounding the allowance, and I seek basically some possible views that you may have on how we can possibly resolve this matter.

I'm rarely at a loss for words, Mr Commissioner, or at a loss for ways of possibly resolving matters, however on this occasion I would very much appreciate any thoughts you have which could in fact direct the parties involved to find the right balance for all concerned, and for all the issues that are involved in this particular matter. If it please the commission.

COMMISSIONER GOZZI: Yes. Thank you, Mr Smyth. Mrs Burgess?

MRS BURGESS: Sir, in relation to the first matter that Mr Smyth raised, he is correct, it was for new and existing employees from paragraph 1. I stand corrected. In relation

to the second matter of Tasmanians moving into the mainland, that also would be their choice on a promotion and on a merit application.

I also refer in response to his application not to decrease Brisbane and to maintain a savings provision of Brisbane, whilst the department is sympathetic to people, there is precedent. The full bench decision where the Deputy President, Commissioner King, and Commissioner Gozzi, as constituted, on the 17th of January 1989 refer to page 6. It was the case of the mainland allowance where Mr Buchanan was then appearing for the TPSA, and Mr Jarman on behalf of the government, where the deputy president says at the bottom of the page:

Well, I think there's one obvious one, Mr Buchanan, and that is the mainland allowance in the Tourism Tasmania Staff Award mentions four capital cities, and you have only made it for an adjustment in respect of two of them. Why is that so?

And he went further on to say:

Basically if the formula is there it goes across the board and you can't choose which ones to increase or decrease.

As the commissioner is aware that the TPSA does accept the formula, and if they accept the formula then they must accept the adjustments that flow from that. If the commission pleases.

COMMISSIONER GOZZI: Thank you, Mrs Burgess. Yes, the award will be varied as per the application Attachment 1; the distinction being that new employees will continue to receive the allowances contained in 16(a)(i). The operative date will be from today, and I'll address the issues with respect to the submissions made in my decision. These proceedings are concluded.

HEARING CONCLUDED