

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T Nos. 2543 of 1990, 3410 and  
3585 of 1991

**IN THE MATTER OF** an application by  
the Federated Clerks Union of  
Australia, Tasmanian Branch to  
vary the Estate Agents Award

re structural efficiency,  
deletion of section (b) clause 19  
- Overtime, and increase to wage  
rates and allowances by 2.5 per  
cent

COMMISSIONER GOZZI

Hobart, 25 November 1991  
continued from 4/9/90

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER GOZZI: Thank you. Could I have appearances in all matters please.

MRS H.J. DOWD: If the commission pleases, I appear on behalf of the Federated Clerks Union of Australia, Tasmanian Branch, DOWD H.J.

COMMISSIONER GOZZI: Thank you, Mrs Dowd.

MR S. CLUES: If it pleases the commission, I appear on behalf of the Tasmanian Confederation of Industries, CLUES S.

COMMISSIONER GOZZI: Yes, thank you, Mr Clues. Mrs Dowd?

MRS DOWD: Mr Commissioner, we have before you today three applications from the Federated Clerks Union in relation to the Estate Agents Award. If we may, we would like to proceed with 2543, which is an application for the second structural efficiency increase.

COMMISSIONER GOZZI: Right.

MRS DOWD: And that will then clearly demonstrate that the application T.3410 of 1991 seeking to delete section (b) from clause 19 - Overtime, can be withdrawn.

COMMISSIONER GOZZI: Well, that's good. We'll do that then.

MRS DOWD: Thank you.

COMMISSIONER GOZZI: We'll proceed with 2543.

MRS DOWD: Mr Commissioner, we have before you a consent document, I would like to actually hand copies of that document to the commission.

COMMISSIONER GOZZI: Exhibit D.1.

MRS DOWD: Mr Commissioner, this document outlines the agreed variations at this stage to this particular award. The Federated Clerks Union reserves the right to seek further variations to some clauses in the future and to seek a variation to the existing classification structure when our negotiations with the TCI on the classification structure proposed for the Clerical and Administrative Employees Private Sector Award are finalised and in place in that particular award.

COMMISSIONER GOZZI: Now, which one is that again? Just for -

MRS DOWD: Clerical and Administrative Employees Private Sector Award. In relation to document D.1, the clause 3 - Arrangement is unchanged, except for the conditions of

employees in Division A. This actually shows the clause numbers and new clauses that have been inserted.

COMMISSIONER GOZZI: Yes, where have you got the conditions? Oh, yes, right. Right, I've got that.

MRS DOWD: First page is actually unchanged, but the second page is changed, it's in relation to the clause numbers. We are seeking an operation date as of the 25th of November 1991, but that has not been inserted at this stage in clause 4.

COMMISSIONER GOZZI: Was that the -

MRS DOWD: Today's date.

COMMISSIONER GOZZI: On or after the first pay period, is it?

MRS DOWD: Yes.

COMMISSIONER GOZZI: Beginning of the first full pay period, right. Right.

MRS DOWD: On page 3, clause 5 - Supersession and Savings, that just accommodates the changing of the award number, if this draft document is actually accepted by the commission. No.4, clause 8 - Wage Rates. They're the new wage rates incorporating \$12.50 and \$15 .... under the structural efficiency principles.

COMMISSIONER GOZZI: There are no 3% classifications there?

MRS DOWD: No, Mr Commissioner, there's not.

COMMISSIONER GOZZI: Right.

MRS DOWD: On page 4, under (c) - Additional Payments, these figures have been adjusted by the 3%. And the only figures to actually change are for the 19 to 20 years of age and 20 to 21 years of age, and each of them increased by 10 cents.

COMMISSIONER GOZZI: Right.

MRS DOWD: On page 5 there is a new subclause, trainees wage rates, which is clause (d). This has actually been transferred from the existing clause 26(h). We thought it was more appropriate to actually have this in the wages clause instead of having it in the traineeship clause. No.2 - Minimum Wage, that has been adjusted to 251.10 for both the minimum wage and also for Division B - Salesmen and Managers.

COMMISSIONER GOZZI: Right. Is that just by - up by what, by 3%, is it, or -

MRS DOWD: It's gone by \$10.



COMMISSIONER GOZZI: By 2.5% or what -

MRS DOWD: We haven't done the 2.5% yet, Mr Commissioner.

COMMISSIONER GOZZI: Oh, it's structural efficiency isn't it, yes. So that's gone up by \$10.

MRS DOWD: That was our agreed figure, Mr Commissioner. Most of the other awards that we've actually dealt with the minimum wage has actually been adjusted by \$10.

COMMISSIONER GOZZI: What was the rationale for that?

MR CLUES: Basic classification.

MRS DOWD: Beg pardon?

MR CLUES: Basic classification.

MRS DOWD: Mr Clues informs me it's the basic classifications.

COMMISSIONER GOZZI: That's fair comment.

MRS DOWD: On page 6, annual leave, the only changes to this particular clause are the changes of clause number and also the deletion of his and hers, replacing with the word 'the'.

COMMISSIONER GOZZI: Right.

MRS DOWD: The clause 11 - Compassionate Leave, we have agreement to insert the word 'grandchild' after 'grandmother' in line 3, to allow employees who experience the loss of a grandchild to be allowed the right to time before, during and after the funeral, to comfort parents and compose themselves and to also come to terms with the loss of the close relative.

No.7 is inserting a new clause - Contract of Employment. There was no contract of employment clause in the award so we have agreed to actually insert one, and we propose the insertion of this particular clause to cover this important area. We believe that it is important to have a contract of employment clause in an award, and this is a direct take from the Retail Trades Award or the Clerical, Administrative Employees Private Sector Award.

No.8 which will be a new clause 13 - Enterprise Agreements. This is also a direct take from the Clerical, Administrative Employees Private Sector Award. No.9 on page 8 is just -

COMMISSIONER GOZZI: Is it just a standard type of clause, is it?

MRS DOWD: Yes, it is, Mr Commissioner.

COMMISSIONER GOZZI: Yes, okay.

MRS DOWD: No.9 is just a renumbering of existing clause numbers to another clause number. No.10, we have agreed to delete the existing clause 13 - Holiday and Sunday Work and insert a new clause, which reads:

For all time of duty on any of the holidays mentioned in Clause 16 - Holidays with Pay, and for all time of duty on any Sunday, payment shall be made at the rate of double time.

No employee shall unreasonably reject an employer's request to work on a Sunday or Public Holiday.

The current -

COMMISSIONER GOZZI: What's the current penalty?

MRS DOWD: The current penalty is still double time, Mr Commissioner, but there was a reference there that employees who refused to work would forfeit the right of payment for any holidays.

COMMISSIONER GOZZI: Right.

MRS DOWD: So we've actually just changed the last sentence.

COMMISSIONER GOZZI: Yes, fine.

MRS DOWD: Holidays with pay - that's again deleting reference to he and she and inserting 'the employee', and also the inclusion of a new subclause:

An employer may, by agreement with the employee, work that employee on any public holiday prescribed in subclause (a) provided an agreed substitute day off is provided at the penalty equivalent.

No.12 is a change in hours of work from 8.00 a.m. to 6.00 p.m. which now reads 7.30 a.m. to 6.00 p.m.

We have agreed to delete the clause 'intermittent employees' that is now covered under a new clause which is - will be part-time employees and it will be clause No.21.

No.14 is again a procedural change in clause numbers.

Occupational superannuation - again these are procedural changes to accommodate the changes in the clause numbers and also the change of clause names. For example in (d), from intermittent to part time.

COMMISSIONER GOZZI: Right. I note there you've got intermittent and casual employees, but item 13 only refers to intermittent employees. Should that be intermittent and casual employees.

MRS DOWD: The reference in the occupational superannuation does relate to part time and casual employees - two clauses. But where we've actually deleted the clause 'intermittent employees', that will only be replaced by part-time employees

COMMISSIONER GOZZI: Right.

MRS DOWD: - because there is already a casual employees clause in the award.

COMMISSIONER GOZZI: Oh yes, you've - you've left casuals in the award -

MRS DOWD: Yes, we have, Mr Commissioner.

COMMISSIONER GOZZI: Yes, I can see, yes, fine.

MRS DOWD: No.16 - Overtime - we have agreed to delete the existing clause 19 - Overtime - and insert in lieu the clause as shown on the document. It's a new clause and covers the concerns that the FCU had in relation to our application to delete (b) from existing clause 19 - Overtime.

The parties have now reached agreement on this issue and submit the new clause which now reads:

(a) For all time of duty in excess of ordinary hours, or on a Saturday, or before the time fixed for commencing work or after the time fixed for ceasing work, payment shall be made at the following rate - time and one half (1.1/2).

(b) A junior employee under the age of 17 years shall not be required to work overtime unless the employee so desires.

(c) In computing overtime, each day's work shall stand alone.

(d) For the purpose of determining the appropriate hourly rate for overtime purposes, the appropriate weekly rates shall be divided by two seventy-fifths.

(e) For the purpose of determining overtime entitlements of an employee, an employee who works ten (10) minutes or more past the time fixed for



ceasing work shall be paid overtime rate for all the time worked after the time fixed for ceasing work.

Provided that this sub-clause shall not be used to obtain unpaid work from employees on a regular basis.

(g) Where an employee request and the employer agrees, overtime may be allowed to accrue and time off at the penalty equivalent may be allowed in lieu of payment of overtime. Provided that such time off shall be paid at the ordinary rate.

COMMISSIONER GOZZI: The two seventy-fifths divisor - that's fortnightly hour is it?

MRS DOWD: The hourly - the number of hours in the award, Mr Commissioner, are 37.1/2 hours -

COMMISSIONER GOZZI: Yes.

MRS DOWD: - and instead of dividing by 1/37.1/2 we thought it was easier to retain the 2/75ths which is also included in the award in other areas.

COMMISSIONER GOZZI: What's the mathematics of dividing a weekly rate by 1/37 - 1/37.5 compared 2/75th - it should come out the same shouldn't it?

MRS DOWD: There's no difference, Mr Commissioner. We just thought that it was easier to retain the same wordage in a document as was already in the original award, which has 2/75ths - and it's easier to -

COMMISSIONER GOZZI: If you divide 75 - 2/75th of 75 is 2 - is 1 - is 2 hours, rather, and if you divide 75 by 37.5 is 2 as well so that's - comes alright doesn't it?

MRS DOWD: It just seemed an easier way to actually word it in the document and retain exactly the same verbiage as was in other sections of the award.

COMMISSIONER GOZZI: Yes, I was just - as I say, just looking at the arithmetic of it. What sort of an hourly rate do you get, if you get paid \$75 a week and you divide it by 2/75ths you get an hourly rate of -

MRS DOWD: Two dollars.

COMMISSIONER GOZZI: Two dollars - of \$2. If you divide the \$75 a week by 37.5 you still get -

MRS DOWD: You still get 2.

COMMISSIONER GOZZI: - \$2 - so as I say, the arithmetic works out okay, yes.

MRS DOWD: No. 17 is the new clause for part-time employees. This clause actually replaces the existing clause 16 - Intermittent Employees - and it spells out more clearly the differences between the employees who work between 20 and 37.1/2 hours and those who work for less than 20 hours. It is a standardised clause that is inserted in a lot of awards in relation to part-time employees.

The payment of wages clause -

COMMISSIONER GOZZI: Is the part-time percentage rate for less than 20 hours - what happens there at the moment? What do they get paid at the moment?

MRS DOWD: They get paid the 2/75ths.

COMMISSIONER GOZZI: Yes.

MRS DOWD: Plus the 10%.

COMMISSIONER GOZZI: Don't they get - I thought the loading of 10% had shifted, that was all.

MRS DOWD: It is 10% in this award, Mr Commissioner.

COMMISSIONER GOZZI: It's currently 10%?

MRS DOWD: It is.

COMMISSIONER GOZZI: Okay.

MRS DOWD: The payment of wages clause - this actually specifies ways and means for the payment of wages and allows flexibility for employers and includes the reference to electronic funds transfer.

COMMISSIONER GOZZI: Is that a new clause?

MRS DOWD: The existing clause actually states the wages are to be paid monthly, but it doesn't specify any way that the wages should be paid.

COMMISSIONER GOZZI: See, I have a fundamental problem with respect to paying for electronic funds transfers because the reason electronic funds transfer was introduced was to give employees a 4% second-tier increase; it was an offset to get that increase. And the question of whether or not employees should, in fact, be paid for the cost incurred when you have your money paid into the bank in that manner and you want to withdraw it, was tested before a full bench who declined to



award it on the basis that it was an offset for the 4% second tier.

So I'd be interested to know how you came to the conclusion that that should go in there because by consent obviously, is it?

MRS DOWD: Yes, it is, Mr Commissioner.

MR CLUES: Yes, it is, Mr Commissioner.

MRS DOWD: We believe that if an employee is to receive their wages by the payment of electronic funds transfer, the employee should not incur any reduction in their wages by having payment that way. If an employer pays cash the employee gets the full amount; if the employer pays through the electronic funds transfer the employee incurs a cost for -

COMMISSIONER GOZZI: I realise that, yes. But simply, as I'm saying, they're offsets for wage increases about 2 or 3 years ago when the 4% second tier was awarded. Electronic funds transfer was one of the offsets that nearly everybody put in place -

MRS DOWD: Yes, that's right, Mr Commissioner.

COMMISSIONER GOZZI: - and not long after it was put in place it came to a full bench to decide whether or not employees ought to be reimbursed the cost and the full bench said, no, that that was an offset for a wage increase and shouldn't now be turned around and, in effect, double dip on what was granted. So I'm just saying I realise it's by consent and I'll treat it as such, but from my point of view if it was to be arbitrated I would bring it to the attention of the parties, the full bench decision.

MRS DOWD: Right. Thank you, Mr Commissioner. The next clause is insertion of a new clause, Rest Periods. This clause really only formulates the practice which is already in existence in most establishments. Some employers do grant two rest periods and we hope that that practice will continue but this allows for only one rest period.

No. 20 is again just the deletion of 'he' and 'she' and the insertion of 'the employee'. The sick leave clause again is just a general tidy up of the gender bias.

COMMISSIONER GOZZI: Right.

MRS DOWD: Clause 26 - Structural Efficiency, this is a new clause to be inserted and it allows for the establishment of a consultative mechanism and the procedures to be applied and also for the employers to request employees to carry out such duties as are within the limits of the employees' skill,

competence and training. It is a standard clause that has been inserted in most awards in relation to the 2.5%.

COMMISSIONER GOZZI: Yes.

MRS DOWD: No. 23 - Tea Money, this has been increased from \$4.90 to \$5.00 which is the 3% increase which allows a 10 cents increase. No. 24 is deleting the existing clause, Termination of Employment. That is now actually covered under the contract of employment clause, clause 12.

No. 25 is a procedural matter. No. 26, this is where we've actually deleted the '(h)' from that particular section and put it in the clause 8, wages section and then renumbered the existing subclauses.

COMMISSIONER GOZZI: Right.

MRS DOWD: No. 27, again this is fixing up the gender bias and also increased the meal allowance of 3% to coincide with that in the tea money clause. No. 28 is insertion of a new clause, Contract of Employment, in Division B. Again there is no contract of employment clause in that division. This new clause is to allow persons to clearly understand that the minimum wage is not to be in addition to commission earnings but to be the minimum figure to be paid to salesmen and managers who do not reach an acceptable level of commission earnings for any week to enable them to still be able to live with dignity.

Now, Mr Commissioner, there were a couple of words actually missed from your copy of that particular clause and it is the second paragraph:

Furthermore the minimum rate paid for purpose of the award is in advance of commission earnings and not in addition to commission earnings.

COMMISSIONER GOZZI: Yes, there's been a problem or two around that clause.

MRS DOWD: That's right. And No. 29, Mr Commissioner, again is just procedural changes.

COMMISSIONER GOZZI: Right. I wasn't aware that the estate agents - yes, it has, page 20, the traineeship clause. Right. Anything else?

MRS DOWD: No, that is all for that one, Mr Commissioner.

COMMISSIONER GOZZI: All right. Well, thank you, Mrs Dowd. Mr Clues?



MR CLUES: Mr Commissioner, I would like to thank Mrs Dowd for giving such a comprehensive summary of the negotiations that have occurred between the parties. We believe that the variations put to the commission today do, in fact, increase the structural efficiency of the award and allow employers to operate in a more efficient manner and we would argue that they would justify the second stage structural efficiency increase available under the 1989 decision.

I haven't as yet had an opportunity to confirm that the wage rates are, in fact, correct but subject to checking I believe they do represent the second stage structural efficiency increase. Subject to any questions the commission may have, I only intended to give a brief submission to you this morning.

COMMISSIONER GOZZI: Well, I suppose, to you and Mrs Dowd that the structure, of course, still hasn't been varied and I regard that as being also one of the important fundamentals of structural efficiency. Can I ask what's happening in respect of the structure? Mrs Dowd?

MRS DOWD: Mr Commissioner, we haven't changed the structure in this particular award as yet, because as I indicated in my submission we are waiting for the changes that will be implemented in the Clerical, Administrative Employees Private Sector Award, which is the parent award as far as the clerks are concerned in Tasmania. We have not changed the clerical structure in any of our awards in relation to the structural efficiency principles to this stage, simply because we were waiting for the Victorian decision in relation to the Commercial Clerks Award there.

That decision has actually been handed down and therefore discussions have been taking place between Mr Fry and Mr Abey of the TCI in relation to the classification structure. That comes before the president on December the 17th and, hopefully, from that date we will actually have a classification structure that we can then implement into other awards, including this particular award, Mr Commissioner.

COMMISSIONER GOZZI: Yes, I suppose, Mrs Dowd, it's a matter of - and I think probably needs to be considered, I have noted, because you've told me, that it's the intention to include that structure - whatever comes out of those discussions - in the awards that you've - where you've got an interest.

MRS DOWD: That's right, Mr Commissioner.

COMMISSIONER GOZZI: And in some circumstances TCI will be supporting the inclusion of the structure in those awards, and others, I understand, you will be arguing to remove the clerks classifications -



MRS DOWD: That's right, Mr Commissioner.

COMMISSIONER GOZZI: - and have it covered by the private sector award. I'm just wondering whether or not in each circumstance where there is agreement that the structures ought to come out of the award so that that might be done collectively, so that the matter might go maybe to a full bench as opposed to dealing with it singly. So you deal with the two circumstances together, if you like.

You deal with the circumstance where it's supported that the structure comes out of existing awards, right? That could be dealt with by a full bench. And where the revised structure is to go into existing awards and retain - be retained with those awards, that could be dealt with by a full bench as well, because otherwise you're going to have to run the argument on each occasion between five different commissioners. And there's - there's probably no guarantee that each commissioner might see it the same. I don't know.

MRS DOWD: I quite agree with you there, Mr Commissioner.

COMMISSIONER GOZZI: So, it's something that's worthwhile thinking about.

MRS DOWD: I don't think the secretary has actually considered that aspect of the case at all at this stage.

COMMISSIONER GOZZI: Oh, it's not germane here at the moment to what we're doing here, but it's something to think about as far as the future's concerned, particularly if you can come forward with a structure that you've been able to work out by consent.

MRS DOWD: Yes.

COMMISSIONER GOZZI: I mean, it could well be that the whole structure needs to be determined, if you can't agree. And then it also begs the question of whether or not you shouldn't list all the awards that you want the structure to go into and all the awards you want the structure to come out from to be replaced with this new structure, and that those very applications could go to a full bench and deal with all the awards in one hit.

MRS DOWD: There could be some minor variations to the structure in some particular awards because of the nature of the particular industry. But the basic structure we hope will actually be inserted in each of the awards.

COMMISSIONER GOZZI: Anyway I just mention it for - for interest and see what's happening with it. Yes, thank you. Mr Clues, anything else?

MR CLUES: No, Mr Commissioner.

COMMISSIONER GOZZI: Right, thank you. Mrs Dowd, do you want anything further?

MRS DOWD: Not in that one, Mr Commissioner -

COMMISSIONER GOZZI: All right. Well, okay -

MRS DOWD: - unless we wish to go on to the next one, the 2.5%.

COMMISSIONER GOZZI: Yes, all right. Well, with respect to 2543 I intend to endorse the second SEP increase in that from the first pay period beginning on or after the 25th of November in 1991.

MRS DOWD: Thank you, Mr Commissioner.

COMMISSIONER GOZZI: We'll now deal with 3410. Mrs -

MRS DOWD: Mr Commissioner, the Federated Clerks Union is seeking the 2.5% increase available under the state wage case decision of the 13th of August 1991 of this commission.

COMMISSIONER GOZZI: Hang on, 3410 was the next one, which was the deletion of section (b) from clause 19 -

MRS DOWD: Oh, sorry, Mr Commissioner. 3410 we would actually like to delete that application - or withdraw that application, because we believe we have actually handled that problem that arose in relation to clause 19 - Overtime in the structural efficiency adjustments in relation to document D.1.

COMMISSIONER GOZZI: All right, thank you. Mr Clues, any objections?

MR CLUES: I have no objection to the withdrawal of that application.

COMMISSIONER GOZZI: Leave to withdraw is granted. And now, 3585 of 1991.

MRS DOWD: Thank you, Mr Commissioner. The Federated Clerks Union is seeking the 2.5% wage increase available under the state wage case decision of the 13th of August 1991 of this commission. We believe that we have adequately covered the requirements as listed under principle 2 - Structural Efficiency, in Attachment A of the decision. If the commission wishes, I will actually address (a) to (g) of that principle, although I believe we've covered those in outlining the changes in the award for the structural efficiency increase.

COMMISSIONER GOZZI: Yes, you have. Yet the only matter that comes to mind in respect to (a) to (g) is the facilitative provisions, which I think you've got the enterprise -

MRS DOWD: I can actually list those if you like, Mr Commissioner.

COMMISSIONER GOZZI: Yes.

MRS DOWD: The ones that we have actually inserted in the award are the enterprise agreements clause. There is a time off in lieu of overtime. There is also a broken leave provision in the annual leave clause. And the provision of EFT in the payment of wages clause.

COMMISSIONER GOZZI: And what about consultative mechanism?

MRS DOWD: And, yes, the structural efficiency clause as well.

COMMISSIONER GOZZI: That's in the enterprise agreement one, is it?

MRS DOWD: Yes, Mr Commissioner.

COMMISSIONER GOZZI: All right, yes, thank you.

MRS DOWD: The only area that we haven't covered is (g), which is in relation to the MRA process. But as stated before we wish to pursue that once we have the classification structure in place in the award. I actually have copies of the draft order, Mr Commissioner, in relation to the wage rates to include the 2.5%.

COMMISSIONER GOZZI: Yes, thank you, Mrs Dowd. We'll mark that Exhibit D.1. That's fine, thank you, very much.

MRS DOWD: Right, thank you, Mr Commissioner.

COMMISSIONER GOZZI: Mr Clues?

MR CLUES: Mr Commissioner, again I haven't had the opportunity to check the validity of these draft orders but I imagine they shall be correct. Subject to checking those, the TCI believes that the parties have successfully come before this commission with a consent arrangement as to the second stage structural efficiency and the 2.5% wage increase. We believe the ratification of the 2.5% wage increase would be in line with the principles of your decision.

The only issue I would like to raise is in relation to the operative date; the parties have agreed that the operative date for the 2.5% wage increase should be 8 weeks from the date of the second stage structural efficiency increase,



allowing us sufficient time for the employers to adjust from one increase to another.

COMMISSIONER GOZZI: What date's that?

MRS DOWD: The 20th of January 1992, Mr Commissioner.

COMMISSIONER GOZZI: 21 - 20th of January 1992. Is that the first pay period on or after -

MRS DOWD: Yes, Mr Commissioner.

COMMISSIONER GOZZI: Yes, thank you. Thank you, Mr Clues. All right. In the circumstances I intend to endorse that application as well. I think it's simpler to hold the decision in respect of the 2.5% till closer to the date, because I don't want anything to intervene in the meantime - maybe structures or whatever. But whenever I put them out together you can rest assured something happens which mucks up the orders. So you can take it that you'll get a decision in respect of the second 3% virtually straight away. The 2.5, you'll get a decision but I'll hold the order till probably earlier in January and let it go in January.

These proceedings are concluded. Thank you.

HEARING CONCLUDED