

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations (Tribunals) Rules 2000 - r. 80 - practice notes

CERTIFIED AGREEMENTS

PN 6

16 March 2004

PRACTICE NOTE

This Practice Note operates subject to the unfettered and overriding discretion of the Member of the Commission who has been allocated a Certified Agreement for certification.

OBJECTIVE

The objective of this Practice Note is to provide guidance about certain filing and hearing requirements to parties that seek the certification of agreements made pursuant to s. 142 of the *Industrial Relations Act 1999*.

SCOPE

This Practice Note is to be read in conjunction with the following:

- (i) Chapter 6 Part 1 of the *Industrial Relations Act 1999*;
- (ii) Part 4 of the *Industrial Relations Regulation 2000*; and
- (iii) Part 10 of the *Industrial Relations (Tribunals) Rules 2000*.

A Member of the Commission who has been allocated the hearing of an application to certify an agreement retains the discretion to waive or amend any of the requirements detailed under the heading "Hearing Requirements".

Failure to comply with any of the following requirements may result in the Commission being unable to certify an agreement on the scheduled hearing date.

FILING REQUIREMENTS

1. The correct names of the legal entities (including any ACN number) that have made the Agreement must appear in each of the following:
 - the application for certification (Form 40);
 - the *(names of the)* parties bound clause ;
 - the signature block; and
 - the affidavit supporting the application.

The legal entities are to be shown as follows:

- If the employer is incorporated pursuant to the *Corporations Act 2001* (Cwth) then the ACN must be included both in the parties bound clause and the affidavit supporting the application.
 - If the employer is incorporated pursuant to some other legislative enactment then the name of that legislation is to be referenced in both the parties bound clause and the affidavit supporting the application. For example, if the employer is incorporated pursuant to the *Associations Incorporation Act 1981* (Qld) then the parties bound clause should state "(name of employer) incorporated pursuant to the *Associations Incorporation Act 1981*".
 - A business name or trading name cannot be a party to a certified agreement. If the employer is not an incorporated entity then the names of the individuals behind the business name or trading name must be identified both in the parties bound clause and in the affidavit supporting the application.
2. An application for certification of an agreement must be signed by, or for, the Applicant.
 3. The Agreement must include the word "certified" in its title.

4. Where an agreement provides for increase(s) in wages or salaries during the life of the Agreement, a table showing the date of the increase and the wage or salary rate payable from that date is to be included in either the body of the Agreement or attached as a schedule to the Agreement.

A wage or salary schedule attached to the Agreement will be available for public search.

5. Where a clause in an agreement refers to a particular policy of the employer (e.g. uniform, redundancy), a copy of that policy is to be attached to the Agreement as a schedule.

Unless an order for suppression is obtained the policy will not be published but will be available for search by the parties to the Agreement, their agents, employees who are covered by the Agreement, prospective employees and the Inspector (Industrial) appointed under the Act. Prospective employees will be required to produce information to the satisfaction of the Industrial Registrar of the likelihood of their being employed by the employer named in the Agreement.

6. Where the parties to an agreement agree to incorporate some of the terms of a previously approved certified Agreement into the newly made agreement, those terms are to be provided in full.
7. In addition to the requirement under r. 139 of the *Industrial Relations (Tribunals) Rules 2000* (Form 40), where it is intended that an agreement replace an agreement that has previously been certified by the Commission, the new Agreement is to identify the name and number of the Certified Agreement that is proposed to be cancelled.

HEARING REQUIREMENTS

1. The Commission's attention is to be drawn to an agreement that is filed outside the 21 day time limit prescribed by s. 153 of the Act. It will be a matter for the Member to determine whether an extension of time can be granted.
2. Where an agreement is made between an employer and its employees and an industrial organisation of employees is not a party, a Member of the Commission may require a representative of the employees covered by the Agreement to attend the hearing for certification. The representative of employees is to have been selected by other employees to attend as their representative. The selection process is to be open and transparent. The Commission would generally expect the employee representative to have been involved in the negotiation of the Agreement and to not be regarded as a manager. Alternatively, Commission Members may select an employee at random from a list of employees.

At the hearing the Commission may require the employee representative to provide information about such matters as the consultation process, the process of negotiating the Agreement, whether employees had the opportunity to seek representation from a relevant industrial organisation of employees, the information provided to employees about the content of the Agreement and the ballot process.

In such circumstances Members of the Commission will generally require the employee representative to give evidence on oath.

3. Copies of any written information provided to employees to explain the content of the Agreement are to be tendered as an exhibit.

ON CERTIFICATION OF AN AGREEMENT

1. Any amendments of a formal or clerical nature that are minor will be notated on the Agreement by the Commission Member.
2. Once an agreement has been certified the Commission will issue a certificate specifying:
 - (i) the date of hearing(s) of the application to certify the Agreement;
 - (ii) the parties to the Agreement;
 - (iii) the name of any industrial organisation of employees that becomes bound by the Agreement pursuant to s. 166(2) of the Act;
 - (iv) the date of operation of the Agreement (that is, the date the agreement is certified);
 - (v) the nominal date of expiry of the Agreement;
 - (vi) the date of certification of the Agreement;
 - (vii) whether the Agreement was amended;
 - (viii) any undertakings that were given in order to make the Agreement certifiable; and
 - (ix) the number and title of any agreement cancelled as a result of the Agreement being certified.
3. A copy of the above mentioned certificate shall be:

- published on the QIRC website;
- sent to all of the parties to the Agreement, including those industrial organisations of employees that have become bound by the Agreement; and
- placed on the Registry file.

The titles of agreements that have been certified by the Commission will continue to be printed in the QGIG.

This Practice Note will be effective as and from 12 April, 2004.

Dated 16 March, 2004.

D.M. LINNANE
Vice President