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Industrial Relations Act 1999
Industrial Court Rules 1997

NOTICE

The following Agreements have been certified by the Commission:-

No/s	Title	Date certified	Cancelling
CA444/00	Queensland Turf Club Ltd - Certified Agreement 2000	1/9/00	
CA448/00	Emmanuel College - Certified Agreement 2000	14/9/00	CA209/98
CA459/00	Farley Concreting Pty Ltd - Certified Agreement	14/9/00	
CA460/00	Wideform Queensland Pty Ltd - Certified Agreement	14/9/00	CA144/97
CA461/00	Upright Scaffolds Pty Ltd - Certified Agreement	14/9/00	
CA462/00	Strongforce Pty Ltd - Certified Agreement	14/9/00	CA122/97
CA463/00	Concut Pty Ltd - Certified Agreement	14/9/00	CA575/95
CA464/00	Trelville Pty Ltd t/a Aspect - Certified Agreement	14/9/00	CA58/98
CA466/00	CKG Welding Pty Ltd t/a Kelly Green & Co - Certified Agreement	14/9/00	
CA467/00	John Woodgate t/a JA & JM Woodgate Painting - Certified Agreement	14/9/00	
CA468/00	Direct Waterproofing & Sealants Pty Ltd - Certified Agreement	14/9/00	CA457/96
CA469/00	Prima Furniture Queensland Pty Ltd - Certified Agreement	14/9/00	CA428/95
CA470/00	Project Tiling Contractors Pty Ltd - Certified Agreement	14/9/00	
CA471/00	DRS Group Pty Ltd - Certified Agreement	14/9/00	CA373/99
CA472/00	Stegbar Pty Ltd - Certified Agreement	14/9/00	
CA474/00	Mainline Pty Ltd t/a Mainline Waterproofing - Certified Agreement	14/9/00	
CA475/00	Hill Interior Linings Pty Ltd - Enterprise Certified Agreement	14/9/00	CA160/97
CA476/00	Tri-part Pty Ltd - Certified Agreement	14/9/00	
CA477/00	Grezzo & Sons Pty Ltd - Certified Agreement	14/9/00	CA229/97

No/s	Title	Date certified	Cancelling
CA478/00	Frankipile Australia - Certified Agreement (Queensland)	14/9/00	CA284/97
CA479/00	Southport Steel Fixers Pty Ltd - Certified Agreement	14/9/00	
CA481/00	Toowoomba Grammar School Enterprise Bargaining – Certified Agreement 2000	14/9/00	CA462/97
CA266/00	Townsville City Council - Certified Agreement No 3	18/9/00	
CA485/00	Piling Contractors (Qld) Pty Ltd - Certified Agreement	18/9/00	CA501/97
CA487/00	Inghams Enterprises (Cleveland Processing) - Certified Agreement 2000	18/9/00	CA628/97
CA489/00	Teacher Aides Employed by Education Queensland – Certified Agreement 2000	18/9/00	
CA490/00	The Lavarack Barracks Stage 2 Re-Development Project – Certified Agreement	18/9/00	
CA493/00	Coyway Pty. Ltd./a Lynmac Constructions - Certified Agreement	18/9/00	CA565/95
CA494/00	Sunstate Painting Pty Ltd - Certified Agreement	18/9/00	CA286/96
CA495/00	A Cooper & A Stephen t/a A & A Bricklaying - Certified Agreement	18/9/00	
CA496/00	Marrvale Pty Ltd - Certified Agreement	18/9/00	CA347/99
CA497/00	Vision Cabinets Pty Ltd - Certified Agreement	18/9/00	
CA498/00	Barlane Pty Ltd - Certified Agreement	18/9/00	
CA499/00	P & H Immonen (Qld) Pty. Ltd. - Certified Agreement	18/9/00	CA566/95
CA500/00	Leavers & Lawrence Shopfitters Pty Ltd - Certified Agreement	18/9/00	
CA501/00	Capeleigh Bricklaying Pty Ltd - Certified Agreement	18/9/00	
CA505/00	Metallurgical Plants Area Mount Isa Mines Limited – Certified Agreement 2000	21/9/00	CA339/96

E. EWALD
Industrial Registrar

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INDUSTRIAL COURT OF QUEENSLAND

Workers' Compensation Act 1990 – s. 105 – appeal against decision of industrial magistrate

WorkCover Queensland AND Caroline Buchanan (No. C49 of 2000)

PRESIDENT HALL

2 October 2000

DECISION

On 31 October 1996 the respondent commenced work as a cleaner at the premises of the Conrad Treasury Casino in Brisbane. The first occasion on which she was, relevantly, absent from work was over the period 31 January 1997 to 1 February 1997. She claimed to be suffering from stress. She has maintained the claim in these proceedings.

It was a very difficult time to assert the onset of a disease of a psychiatric or psychological nature. 1 February 1997 was the day on which the definition of “injury” contained in the *WorkCover Queensland Act 1996* replaced the definition of injury in the *Workers' Compensation Act 1990*. Henceforth, it was necessary for an applicant for compensation to show, *inter alia*, that the employment was the major significant factor causing the injury. Additionally, by s. 34(4) and (5), injury was defined not to include quite a range of psychiatric or psychological disorders. WorkCover Queensland has overcome the difficulty by making a concession (favourable to the respondent) that the facts of her case should be tested against s. 6 of the *Workers' Compensation Act 1990* in the form which it took on 31 January 1997. Even on that concession, the Industrial Magistrate’s decision must be set aside. The Industrial Magistrate erroneously applied s. 6 of the *Workers' Compensation Act 1990* in its original form. In its original form s. 6 required a claimant to show that the injury arose out of, or in the course of, employment and that the employment was a contributing factor. By amendment, from December 1994 the adjective “significant” was added so that it was necessary for a claimant to show, *inter alia*, that the employment was “a significant contributing factor to the injury”.

Underlying the evidence of the medical practitioners who were called before the Industrial Magistrate is the assumption that what the respondent has told them is correct. I have considered remitting the matter to the Industrial Magistrates Court. The difficulty with that course is the cost. By s. 105 of the *Workers' Compensation Act 1990* the appeal is by way of re-hearing. The Industrial Magistrate has made express findings about credit. The justification for doubting the correctness of that which the respondent told the medical practitioners is clear. In my view, so long as I act on the Industrial Magistrate’s express findings as to credit, it seems to me that this is a case I may properly, within the principle of *Warren v. Coombes* (1979) 142 CLR 531, hear the matter on the record.

Questions arise about the correctness of the respondent’s account of the events which occurred during the course of her employment, not because of doubts about her integrity, but because of the nature of her illness. It was the evidence of Dr Lister, the general practitioner who had treated the respondent in February 1997 that:

“There is no clear psychosis with this patient but a clear tendency to catastrophise and relate an incredible series of traumatic events which may or may not have occurred as related . . .”.

The evidence of the specialist psychiatrist, Dr Varghese, was that the respondent had a significantly disturbed personality which could lead her to misinterpret what was happening in her work environment and that when the respondent was depressed her cognition's altered and she formed a distorted view of what was occurring. I note the respondent's submission that Dr Varghese's *viva voce* evidence differed from his written opinion of February 1997, and was given in circumstances where her condition had deteriorated. The respondent is entirely correct. The point is of course that by the time of the hearing in June 2000, assisted as he was by the opinion of the psychiatrist who was not called (Dr Scott), Dr Varghese had more clearly defined symptoms upon which to form a view of the nature of the condition from which the respondent was suffering.

The question marks hanging over the correctness of the respondent's account of that which had occurred in the work environment are critical for this reason. If the respondent's ultimate account of the sexual harassment which she claimed to suffer during the course of her employment at the Casino is accepted, it is, on the express opinions of Dr Lister and Dr Varghese, open to infer that the respondent's employment was “a significant factor contributing” to the onset of the respondent's condition, or perhaps more accurately to the aggravation of a condition which, while manageable, was in place before the respondent commenced work at the Casino.

It assumes importance that the respondent, whose evidence on some points the Industrial Magistrate rejected, had over time given quite different versions of the incident. No great significance can be attached to a complaint made in the application for Workers' Compensation, *viz* “ongoing gossip of a personal nature. Exacerbated by a lack of interest by supervisors.”. The format of the application form encourages applicants to summarise. It is plain that the respondent was seeking to confine herself to the available space rather than to provide an attachment. Of greater significance are the discrepancies between the statement provided to the Assistant Manager of the cleaning department on 7 January 1997, the first full statement to WorkCover dated 11 March 1997 and the further full statement to WorkCover dated 3 April 1997. The allegations become increasingly serious. Importantly, the union representative who in the statement of January 1997 was criticised for suggesting that the respondent modify her behaviour but otherwise spoken of relatively highly, had by the statement of April 1997 become the principle transgressor.

There were witnesses other than the respondent and the medical practitioners. The Health and Safety Manager from the Casino was called. The Human Resources Manager from the Casino, who at the relevant time had been the Employee Relations Manager, was called. The Facility Cleaning Manager at the material time was called. The Industrial Magistrate expressly held their evidence to be “credible and honest”. The evidence of each of those witnesses contradicts the evidence of the respondent on a variety of matters. Counsel for WorkCover very properly points out that notwithstanding the express finding of credibility, in setting forth a chronology of events and in making findings of fact the Industrial Magistrate described events, which on the evidence of the three witnesses did not occur, and made findings inconsistent with their evidence. The explanation is, I think, to be found in the circumstance that the Industrial Magistrate was applying an incorrect definition of “injury” and taking a very literal view of the decision of Mackenzie, President in *Timbs v The Workers' Compensation Board of Queensland* (1993) 34 WCR 57. At p 67 His Honour observed:-

“An applicant for Workers' Compensation must show more than that the employment was merely the scene in which the development of his depression took place. However, it is not necessary that the applicant show that there was a special, unusual or wrongful factor of his employment which was the contributing factor. It is sufficient that the employment positively contributed to the development of the depression, that is to say, that the employment provided external stimulus to aggravate or accelerate his disease.”.

His Honour went on to quote the observations of Sweeney and Woodward JJ in *Australian Telecommunications Commission v Tzikas* (1985) 5 AAR 173 at 195, *viz*:-

“In our opinion, the resentment of a sick mind, directed towards former conditions of employment, if it aggravates or accelerates a disease and thus contributes to incapacity, is capable of leading to a finding . . . that the employment is still contributing to the aggravation or acceleration.”.

It seems to me to be tolerably plain that the Industrial Magistrate was proceeding upon the view that the respondent's employment could be treated as a “contributing factor” if innocuous events which actually occurred, were totally misconstrued by the respondent because of her existing condition and, in their misconstrued form, aggravated the condition. The Industrial Magistrate, with respect, seems also to have been proceeding on the view that if events and incidents which did occur caused the respondent to imagine that other events or incidents had occurred, once again, the employment could be said to be a contributing factor. It is not necessary to go to the question whether the Industrial Magistrate's approach is a legitimate application of the decision in *Timbs, ibid*. It is plainly not a legitimate approach to the definition of injury in the form which it took after 1 December 1994. It is important to refer once again to the evidence of Dr Varghese. He was of the view that the respondent suffered from a recurrent depressive illness which meant that she suffered distinct episodes of depression with normal functioning in between. An aggravation triggered by a condition induced misconception of events or incidents which had occurred, or triggered by the imagination of additional events is an aggravation which might have occurred at any time and at any place. Characterisation of the employment as “a significant contributing factor” would be quite inappropriate.

In any event, there is no justification for treating the chronology as justifying departure from the finding that the three witnesses from the respondent's former employment were “credible and honest”. In all the circumstances the respondent's account of events cannot be relied upon.

A finding that the respondent suffered an injury within the meaning of the *Workers' Compensation Act 1990* is therefore not open.

I allow the appeal. I set aside the decision of the Industrial Magistrate. In lieu thereof, I order that the respondent's appeal to the Industrial Magistrates Court be dismissed.

There is no application for costs.

Dated this second day of October, 2000.

D.R. HALL, President.

Released: 2 October 2000

Appearances:-
Mr. G.C. Rhead for WorkCover.
The respondent in person.

INDUSTRIAL COURT OF QUEENSLAND

*WorkCover Queensland Act 1996 – s. 509 – appeal against decision of industrial magistrate***James McQuade AND WorkCover Queensland (No. C50 of 2000)****Jeffrey Hayes AND WorkCover Queensland (No. C51 of 2000)**

PRESIDENT HALL

3 October 2000

DECISION

It is convenient to commence by setting forth the terms of s. 499 of the *WorkCover Queensland Act 1996*.**“SECTION 499 PROCEDURE FOR APPEAL****499(1) [Time limit]** The appeal must be made –

- (a) if the appeal is about a review decision – within 28 days after the appellant receives the review decision; or
- (b) if the appeal is about a non-reviewable decision – within 28 days after the appellant receives the notice of the decision stating the reasons for the decision.

499(2) [Non-reviewable decision] For subsection (1)(b), if the notice of the decision did not state the reasons for the decision, the appellant must ask the respondent for the reasons for the decision within 28 days after receiving the notice.**499(3) [Extension of time]** For subsections (1) and (2), the appellant may, within the 28 day periods mentioned in the subsections, ask the respondent to allow further time to appeal.**499(4) [Initiating process]** The appeal may be started only by giving a written notice of appeal to an industrial magistrate.**499(5) [Filing]** The notice of appeal must be filed at –

- (a) the Magistrates Court nearest to the place where the appellant resides or, if the appellant is an employer, carries on business; or
- (b) a Magistrates Court agreed to between the respondent and the appellant.

499(6) [Service of copy] The appellant must, within 14 days after filing the notice of appeal, serve a copy of the notice on –

- (a) if the appeal is about a review decision – the review unit; or
- (b) if the appeal is about a non-reviewable decision – WorkCover or the self-insurer.

499(7) [Notice filed in other than closest court] If a notice of appeal required to be filed in a Magistrates Court mentioned in subsection (5)(a) is filed in another Magistrates Court, the registrar of the other Magistrates Court may send any relevant documents to the registrar of the appropriate Magistrates Court.”.

Each of the two appellants complied with s. 499(1). Each of the appellants failed to comply with s. 499(6). In each matter the delay was minimal. In each matter the Industrial Magistrate rejected a submission that he was bound by the decision of this Court in *Murphy v The Workers' Compensation Board of Queensland* (1996) 152 QGIG 1860 to hold that he had no jurisdiction. In each case the Industrial Magistrate held that he was constrained by the decision in *Meredith v Workers' Compensation Board of Queensland* (1979) 101 QGIG 391 to hold that the Industrial Magistrates Court lacked jurisdiction. In the penultimate paragraph His Worship observed:

“For the reasons given, I am satisfied that I am compelled by the authority of *Meredith* to rule that compliance with subsection (6) of section 499 is a condition precedent to the worker's right of appeal which goes to the very jurisdiction of this Court. That being the case, I am satisfied that subsection (6) of section 499 not being complied with this Court is without jurisdiction to hear the appeals.”.

To understand the decision in *Meredith, ibid*, it is necessary to understand the decision in *Hattan v Beaumont* (1978) 20 ALR 314.*Hattan v Beaumont, ibid*, was an appeal about regulation 14 of the *Liquor Act Regulations (NSW)* made pursuant to the *Liquor Act 1912 (NSW)*, s. 170(5)(b). The terms of the regulation were as follows:–

“Appeals to three licensing magistrates –

14. If any person aggrieved by any such adjudication as is referred to in para (a) of subsection five of s. 170 of the Liquor Act made by a licensing court constituted by a licensing magistrate, or stipendiary magistrate or police magistrate sitting alone, in the exercise of jurisdiction delegated to him under the Liquor Act by the licensing magistrates, desires to appeal pursuant to para (b) of that subsection against such adjudication to the licensing court constituted by the licensing magistrates the following provisions shall apply:–

(a) The appellant shall lodge in duplicate with the clerk of the licensing court in or for which the adjudication appealed against was made a notice of his intention to appeal and the general grounds of such appeal within twenty-one days of the date of such adjudication; and the said clerk shall forthwith send to the secretary of the licensing magistrates a copy of such notice together with the application and adjudication appealed against and all proceedings taken thereunder.

The appellant shall also serve a copy of such notice upon the district inspector or other party and upon each objector appearing on the record of the case within four days after giving notice to the clerk of such appeal.

(b) Every such appeal shall be set down for hearing at a licensing court for the district in or for which the adjudication was made; and the secretary to the licensing magistrates shall give to the clerk of the court and to all parties interested or concerned in such appeal at least fourteen days' notice of the time and place of hearing of the appeal.

(c) The appeal may proceed notwithstanding any omission or error in such notice or the non-service of any party or objector if the court is satisfied that none of the parties or objectors is prejudiced by such omission, error or non-service. If any party or objector is in the opinion of the court so prejudiced, the court may adjourn the hearing on such terms as it thinks fit.

(d) Notice of appeal and all other notices herein required to be given may be sent by registered letter addressed to the party or objector to the address given at the hearing, and if so sent shall be taken to have been served on the day on which such letter would be delivered in the ordinary course of post.

- (e) The appellant shall within seven days of lodging his notice of appeal deposit the sum of ten pounds or enter into a recognizance with one surety in the sum of ten pounds before a justice conditioned to appear at the said appeal court and prosecute his appeal and abide the decision of the court and pay such costs as may be awarded by such court.
- (f) The provisions of ss 126 and 127 of the Justices Act, 1902, shall apply *mutatis mutandis* on the hearing of any appeal.
- (g) The court shall endorse upon the appeal papers a memorandum of its adjudication.
- (h) Where the court orders costs to be paid by any party or objector to an appeal such costs shall be paid to the clerk of the court of the district in which or for which the court is held.”.

The regulation which was not complied with was that contained in sub-reg (e). No sum of money was deposited and no recognizance was entered into by the first nine respondents to the proceedings in the High Court within seven days of their notice of appeal to the licensing magistrates being lodged. A sum of \$20 was deposited on 27 July 1976, thirteen days after the date of lodging of the notice. When the appellant discovered that the requirements of sub-reg (e) had not been complied with within the time required by that subregulation, he instituted proceedings in the Supreme Court of New South Wales seeking an order quashing the order made by the licensing magistrates on the ground that the order was made without jurisdiction. He sought a declaration that the order made by the single licensing magistrate conditionally granting his application was in full force and effect. Loveday AJ made the order and the declaration sought by the appellant. The nine objectors appealed to the New South Wales Court of Appeal which reversed the decision of Loveday AJ. The appellant then brought an appeal against the order of the New South Wales Court of Appeal to the High Court of Australia. In support of his contention that sub-reg (e) deprived the Full Bench of the licensing magistrates of jurisdiction to hear the appeal which had been lodged on behalf of the respondents, the appellant submitted that the subregulation was a mandatory requirement, the performance of which was a condition precedent to the jurisdiction of the magistrates. It was the contention of the appellant that in assessing whether sub-reg (e) was mandatory or directory only, the Court of Appeal had failed to give proper effect to the principle stated in the (then current) *11th Edition of Maxwell on Interpretation of Statutes*, at pp 364 and 367:

“A strong line of distinction may be drawn between cases where the prescriptions of the Act affect the performance of a duty and where they relate to a privilege or power. Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right of authority conferred, and it is therefore probable that such was the intention of the legislature. But when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

...
Enactments regulating the procedure in courts seem usually to be imperative and not merely directory. If, for instance, a right of appeal from a decision be given with provisions requiring the fulfilment of certain conditions, such as giving notice of appeal and entering into recognisances, or transmitting documents within a certain time, a strict compliance would be imperative and non-compliance would be fatal to the appeal.”.

In dealing with the argument, Jacobs J, with whom Gibbs ACJ Stephen and Aickin JJ agreed, observed (at 319):

“Then as to the correct approach to be adopted when the legislative intention is not clear. To say that procedural requirements are usually or *prima facie* mandatory in character cannot gainsay the primary necessity of examining the framework and language of the statute or regulation, and that is what was done in the New South Wales Court of Appeal. I would also concentrate my attention on the form of reg. 14. It seems to be that the regulation commences in sub-reg (a) with the mandatory requirement imposed upon the appellant. He must lodge notice of intention to appeal within 21 days of the date of adjudication. He must also serve a copy of such notice upon the district inspector or other party and upon each objector. The requirements imposed upon the clerk of the licensing court and the secretary of the licensing justices are probably directory only as they are directed to officers of the court or the magistrates. Then by sub-reg (c) the particular consequences of certain failures to observe the requirements of sub-regs (a) and (b) are stated. But there remains the obligation to lodge within 21 days a notice of intention to appeal. There is no provision for any release from that requirement.

Then reg 14 in the remaining sub-regulations proceeds to matters which are largely facultative, eg sub-regs (d), (f) and (h), or directory to the court, sub-reg (g). Placed among these facultative and directory provisions is sub-reg (e), the requirement of deposit or recognizance. It seems to me that in that context sub-reg (e) should not be read as mandatory. The mandatory provision imposed on an appellant, the requirement that notice of intention to appeal be lodged within 21 days, appears in the earlier sub-regulation. The degree to which observance of other requirements specified in sub-regs (a) and (b) may in certain circumstances be excused are then stated in sub-reg (c). The regulation-making authority then proceeds in the rest of reg 14 including sub-reg (e) to matters which are facultative or directory in character. For these reasons and for the reasons expressed by Hope JA in his analysis of the regulation, I conclude that the requirement in sub-reg (e) is directory only and that the appeal should be dismissed.”.

It is against that background that one should go to *Meredith v Workers Compensation Board of Queensland* (1979) 101 QGIG 391. That case involved regulation 26 made under the *Workers' Compensation Act 1916*.

In setting out reg 26 I also set out reg 24. Regulation 24 is material:

“**24. If applicant objects to Office's decision.** Any applicant for compensation who objects to the ruling thereon of the Office may, within sixty days after receipt of notice of such ruling, forward to the Office a notice stating the nature of his objection and requiring the matter to be heard and determined by an industrial magistrate subject nevertheless to the provisions of section 14A, subsection 14B (3) and section 14C of the Act.

26. Procedure on reference to an industrial magistrate. (A)(i) If in accordance with either regulation 23 or regulation 24 hereof either the office or the applicant requires any matter to be heard and determined by an industrial magistrate, the party requiring such reference shall, within sixty days of having forwarded a notice requiring such reference to the other party, apply, in writing, to the clerk of the court stating that it or he requires such reference and the clerk of the court shall thereupon arrange with an industrial magistrate to fix a time and place for the hearing of such reference, and shall notify the parties accordingly. Provided, however, that in the case of an applicant to whom subsection (2) of section 9 of this Act applies, the Office or such applicant shall apply in writing to the clerk of the court, Brisbane, if it or he requires such a determination by an Industrial Magistrate, and the clerk of the court shall arrange with the Industrial Magistrate, Brisbane, to fix a time and place for the hearing of such reference and shall notify the parties accordingly.”.

It will be observed that reg 24 is the counterpart of the present s. 499(6), whilst reg 26 is the counterpart of s. 499(1).

The appellant had (probably) complied with reg 24 but had failed to comply with reg 26 as to time and in giving the application to the clerk of the court at Redcliffe instead of Brisbane. The appellant submitted that regulation 26 was not mandatory. The submission was based on *Hatton v Beaumont* (1978) 20 ALR 314. It was plainly wrong. Put aside any issue as to whether differences in context and text made *Hatton v Beaumont* (1978) 20 ALR 314 an unreliable guide, the decision gave support to the proposition that regulation 24 was directory and gave support to the proposition that regulation 26 was mandatory. It was in that context that Matthews, President observed:

“In support of his second proposition counsel for the appellant relied on *Hatton v. Beaumont & Ors.* (1978) 52 A.L.J.R. 589. In that case it was held by the High Court that an appellant under the *Liquor Act* 1912 (N.S.W.) who had given notice of his intention to appeal within regulation 14 (a) could be excused from compliance with a further subregulation which required him to make a deposit of a sum of money or enter into a recognizance to prosecute this appeal within seven days of lodging his notice. The basis of the decision is to be found in the reasoning of Jacobs J. (with whom three other members of the Court agreed) when he quoted from *Maxwell on Interpretation of Statutes*. 11th ed. (1962) pp. 364 and 367:”

His Honour then cited the passage from Maxwell set out by Jacobs J and reproduced above. His Honour concluded:

“Obviously within this principle the requirement of the relevant provision of the *Liquor Act* 1912 (N.S.W.) of lodging a notice of intention to appeal within a time limit (regulation 14 (a)) was imperative and not merely directive and I would think that when one looks at regulation 26 it lays down what amounts to a condition precedent to anybody’s right to appeal from a decision of the respondent and that in the event of non-compliance with the terms of regulation 26 there has been no appeal instituted before an Industrial Magistrate as would enliven his jurisdiction.”

Meredith v Workers’ Compensation Board of Queensland (1979) 101 QGIG 319, if applicable, is authority that s. 499(1) of the *WorkCover Queensland Act 1996* goes to jurisdiction. It is entirely silent upon s. 499(6).

In my view the Industrial Magistrate was right to put aside *Murphy v The Workers’ Compensation Board of Queensland* (1996) 152 QGIG 1860. The structure of s. 104 of the *Workers’ Compensation Act 1990* was entirely different. Section 104(2) plainly went to jurisdiction. Section 104(3) merely gave a verb at s. 104(2) its meaning. On the appeal some reliance has been placed on the following passage (at p. 1860) in the judgment of de Jersey, President:

“The appellant appeals now against that determination. Mr Gorman, who appears for the appellant, concedes that the requirements of section 104 are mandatory. That concession was right. In *Meredith v. Workers’ Compensation Board of Queensland* (1979) 101 QGIG 391-392, Mr Justice Matthews considered regulations 24 and 26 of the regulations made under the *Workers’ Compensation Act 1916*, comparable in effect to section 104 of the current Act, and he termed the analogous provision for ‘lodging a notice of intention to appeal within a time limit’ as ‘imperative and not merely directive’, as ‘a condition precedent to anybody’s right to appeal from a decision of the respondent’. (See page 392.)”

In truth, the passage helps the respondent not at all. The President, correctly attributed to Matthews, President, that he had considered regulations 24 and 26. His Honour also attributed to Matthews, President, that which Matthews, President, had decided about regulation 26. It is not attributed to Matthews, President, that anything was decided about regulation 24.

In those circumstances, I go to s. 499. It is plain that the legislative intention is not clear. Unlike s. 104 of the *Workers’ Compensation Act 1990* the provisions of this section are not apparently mandatory. By subsection (3) the time limited by subsection (1) may be extended by consent of WorkCover Queensland. By subsection (7) breach of subsection (5) may be corrected. On one view of it, all of that goes around in a circle. The implication could be that subsection (6) was seen by the legislature as more stringent than subsections (1) and (5). It could be that there is an indication that the legislature thought a relaxation provision related to subsection (6) was unnecessary because subsection (6) was not mandatory. However, on another view of it, the various relaxations are suggestive of procedure rather than jurisdiction. So also of course, is the section heading which by s. 35C of the *Acts Interpretation Act 1954* is to be treated as part of the Act. I accept the submission on behalf of the respondent that s. 505 of the *WorkCover Queensland Act 1996* is not expressed in a language one would expect where the intent was to grant a power to extend time. But the presence or absence of a power to grant an extension of time is not decisive. A conclusion that subsection (6) is directory rather than mandatory does not mean that subsection (6) does not need to be complied with. The conclusion that subsection (6) is directory only still requires compliance in substance, compare *Scurr v Brisbane City Council* (1973) 133 CLR 242 at 255. One can understand why a legislature would support a directory provision with a power to extend time. Exercise of a discretion to extend time is a more ruly exercise than testing for substantial performance.

The matter as I say is not clear, but after some vacillation, I have come to the conclusion that s. 499 of the *WorkCover Queensland Act 1996* is directory.

It is common ground that on such a view s. 505 vests power to extend time.

I allow the appeals. I order that each of the decisions of the Industrial Magistrate of 24 July 2000 be set aside. I remit both matters to the Industrial Magistrate.

I reserve the question of costs in both matters. My associate will arrange to take written submissions.

Dated this third day of October, 2000.

D.R. HALL, President.

Released: 3 October 2000

Appearances:–
Mr A. Horneman-Wren for James McQuade and Jeffrey Hayes.
Mr S. P. Sapsford for WorkCover Queensland.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Trading (Allowable Hours) Act 1990 – s. 21 – trading hours orders on non-exempt shops

Retailers’ Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (No. B178 of 2000)

VICE PRESIDENT LINNANE
COMMISSIONERS EDWARDS AND SWAN

29 September 2000

Application to vary trading hours for Coles Express Store, City – application granted.

DECISION

This is an application by the Retailers’ Association of Queensland Limited, Union of Employers (the RAQ) seeking to vary the *Trading Hours Order – Non-Exempt Shops Trading by Retail – State* (the Order) in so far as that Order relates to the area of the City Heart of Inner City of Brisbane occupied by Coles Express. The current trading hours for the Coles Express store in Edward Street, Brisbane are as follows:–

	Opening Time	Closing Time
Monday to Friday	6.00am	9.00pm
Saturday (including Easter Saturday)	6.00am	5.00pm
Sunday	10.30am	4.00pm

The application seeks the following trading hours:-

	Opening Time	Closing Time
Monday to Thursday	6.00am	9.00pm
Friday	6.00am	0.00pm
Saturday	6.00am	9.00pm
Sunday	9.00am	7.00pm
Public Holidays (as defined) (excluding the twenty-fifth of December, Good Friday, the twenty-fifth of April and Labour Day)	8.30am	5.30pm

Basically the application seeks an extra hour's trading on Friday night from 9.00pm to 10.00pm, an extra four (4) hours trading on Saturday evening from 5.00pm to 9.00pm, an extra four and one-half (4.5) hours trading on Sunday being 9.00am to 10.30am and 4.00pm to 7.00pm and trading on public holidays (excluding 25 December, Good Friday, 25 April and Labour Day) for an additional four and one-half (4.5) hours being an 8.30am start instead of a 10.30am start and a finishing time of 5.30pm rather than the current closing time of 4.00pm.

The application is opposed in its entirety by the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (the QRTSA) and by the National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers (the NMAA). The position of the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (the SDAEA) is that it supports the extension of trading hours for the City Express store to the following hours:-

	Opening Time	Closing Time
Monday to Thursday	6.00am	9.00pm
Friday	6.00am	10.00pm
Saturday	6.00am	7.00pm
Sunday	9.00am	6.00pm
Public Holidays (excluding the twenty-fifth of December, Good Friday, the twenty-fifth of April and Labour Day)	8.30am	5.30pm

Members of the Full Bench had the benefit of inspecting the independent retail stores that are located in the City Heart of Inner City of Brisbane on the evening of Saturday, 22 July, 2000. We also had the opportunity of inspecting the Coles Express store on the first day of hearing, ie 31 July, 2000.

The Minister for Employment, Training and Industrial Relations intervened in the proceedings pursuant to s. 322 of the *Industrial Relations Act 1999*. In so doing the Minister indicated that he was neither supporting nor opposing the application but rather was appraising the Full Bench of the Queensland Government's obligations under the National Competition Policy and the Competition Principles Agreement made between the Commonwealth and the States and Territories on 11 April, 1995. The Commission has taken into consideration the submissions of the Minister in this regard.

The Coles Express store was opened on 2 November, 1998 and currently there is no comparable store in the Brisbane CBD area although the material before us raises the possibility of similar stores in the future.

The trading hours of the Coles Express store has been the subject of two earlier decisions of this Commission. In its decision in B1242 of 1998 a Full Bench of this Commission outlined the general nature of the supermarket that was proposed for the site now occupied by Coles Express: see (1998) 159 QGIG 10. Whilst it was only a proposed supermarket at that time much of the evidence relied upon by that Full Bench was confirmed during the course of this proceeding as having actually occurred.

The RAQ relied predominantly upon the evidence of Gregory David Wells, the Manager of the Coles Express store. The store is approximately one quarter the size of the average sales floor of a Coles supermarket. Its customers can be categorised as follows:-

- backpackers/tourists;
- Brisbane CBD shoppers;
- office and retail workers shopping for their meals and take home requirements;
- inner city business purchases;
- inner city residents.

Mr Wells' evidence went to the needs of these particular customers and how the majority of the items sold at the Coles Express store were small, medium or individually portion controlled packages. According to Mr Wells, the store has a product range of only 12,000 items and the average customer purchase is 3.42 items. The store is geared to the commuter, worker, shopper, tourist or inner city resident's immediate and convenience needs with very few customers endeavouring to do a full shop at the store.

There are currently three other Coles Express stores operating in Australia. One is located in Flinders Street in Melbourne, one in George Street, Sydney and one in the Wynyard Station complex in Sydney. The Full Bench was supplied with statistical data, comparing the operations of these three stores with the Brisbane Coles Express store. Given that statistical data Mr Wells was confident of very strong customer usage of the additional hours sought in the application.

The RAQ also relied upon seven different surveys conducted of both customers of the store and persons passing Edward Street while the Coles Express store was closed.

Mr Wells also gave evidence on the issue of the employment effects of the extension of trading hours (excluding public holidays). If the Application were granted, he anticipated that a net additional 75 positions would be created covering 179½ hours of additional work. His evidence also went to the additional employment opportunities should the store be able to trade during the public holiday hours sought in the application.

In addition the RAQ relied upon the evidence of Michael Norris, the Co-Chairman of the Brisbane City Council's Economic Development Steering Committee (the Steering Committee). Mr Norris' evidence went to the Steering Committee's support for the RAQ's application and how extended trading would assist the convenience of a rapidly expanding population of consumers in the Brisbane city area.

In opposing the application, the QRTSA relied upon the evidence of John Hockings, the owner of a convenience store in Spring Hill known as the IGA X-press Spring Hill store. Mr Hockings now provides a 24 hour – 7 days per week – 365 days per year operation. He also operates a convenience store in Fortitude Valley. Mr Hocking obviously runs convenience stores of a very high standard given the awards he has won in recent times. He has approximately 8,000 customers coming through his Spring Hill store each week. Mr Hocking advised the Commission that currently there were eight 7–Eleven stores, two Nightowl stores and a Sfarmart store in the Brisbane City Heart. His evidence was that those stores together with his Spring Hill store adequately catered for the needs of persons in the CBD area of Brisbane during the extended periods sought in this application.

Mr Hockings' evidence generally went to the adverse effect not only on his business but also on the businesses of the independent operators in the Brisbane City Heart should the application be granted.

In evaluating the merit of the application before us regard must be had to s. 26 of the *Trading (Allowable Hours) Act 1990*. That section outlines the matters that the Commission must have regard to in making any order under s. 21 of the Act. The matters referred to in s. 26 that appear relevant to this application include:–

- (i) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- (ii) the needs of the tourist industry or other industry in such locality or part;
- (iii) the needs of an expanding population;
- (iv) the public interest, consumers' interest, and business interest (whether small, medium or large).

It is important to a determination of the application that the Coles Express store is currently trading extended hours as a result of the decision of this Commission in B1242 of 1998. The evidence reveals that the store opens during all of the hours that it is permitted to trade.

The Brisbane City Heart has, in previous decisions of this Commission, been found to be a tourist precinct: see *Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Others* (1998) 159 QGIG 220 at 222 where it was stated:–

“... a series of decisions of this Commission has accepted that the City Heart of Brisbane is a tourist precinct. It is an object of the Act to facilitate trading in tourist areas – s. 3(c). By s. 26(b)(c) the Commission is enjoined to have regard to the needs of the tourist industry and the needs of an expanding tourist industry. Materially, the tourist industry within the City Heart is expanding by providing for and seeking to attract the backpacker market. They and the traditional visitors in commercial accommodation within the City Heart are likely to be principal beneficiaries of permitting the proposed shop to trade outside the existing hours.”.

The evidence before us is that the further expansion of trading hours for the Coles Express store will benefit the backpacker and tourist market.

We also had before us evidence of a rapidly expanding population of consumers in the Brisbane City area and of how an extension of trading hours as sought in the application would benefit that population.

In assessing the public interest this Commission is required to weigh up any competing interests. On the one hand we have the interests of consumers in being able to purchase products in the extended trading hours sought and the interests of Coles Express in wishing to trade the extended hours. On the other hand we have the interests of the twelve independent operators, whether they be small or medium businesses, trading in or around the Brisbane City Heart whose businesses may be affected adversely by the grant of the application.

Since Mr. Hocking opened his Spring Hill convenience store (some five years ago) it would appear that he has operated successfully. This has been achieved despite the fact that:–

- the Coles Express store commenced operation in that time and, given its location in the City Heart of Inner City of Brisbane, would always have been entitled to trade from 8.00am until 9.00pm Monday to Friday, 8.00am to 5.00pm on Saturdays and 10.30am to 4.00pm on Sundays; and
- the granting of extended trading hours for the Coles Express store as and from 1 November, 1998 to enable the store to trade from 6.00am to 9.00pm on Monday to Friday and from 6.00am to 5.00pm on Saturday in addition to trading from 10.30am to 4.00pm on Sundays.

In assessing the public interest the Commission has, in previous decisions, looked at the impact on employment, if any, that the granting of the application for extended trading might have. Not only can it be a consideration in the determination of where the public interest lies but also it is another “relevant matter” under s. 26(g) of the Act that the Commission can consider in determining such applications. The evidence before us is that if the application in respect of Friday, Saturday and Sunday is granted an additional 179.5 hours of work would be generated. If the application in respect of public holidays is granted then there would be an additional 275 hours on those public holidays that the Coles Express store is currently closed and an additional 64.5 hours on those public holidays that the Coles Express store is currently open.

The Full Bench in B1242 of 1998 referred to some unusual or novel aspects of the application for extended trading for the Coles Express store that was then before the Bench. In particular that Full Bench noted that:–

“There was another element of novelty to the application. The proposed store is, in any event, allowed to open between the hours of 8.00am and 9.00pm on Monday, Tuesday, Wednesday, Thursday and Friday (public holidays excluded), between 8.00am and 5.00pm on a Saturday (public holidays excluded) and between 10.30am and 4.00pm on Sunday (Easter Sunday excepted). No person, industrial organisation or other organisation appeared to support grant of the whole of the application. In an unusual move, however, the Shop, Distributive and Allied Employees' Association (Queensland Branch) Union of Employees (hereafter SDA), which has coverage of those who will work in the store, and The Australian Workers' Union of Employees, Queensland (hereafter AWU), which covers shop assistants in the north of the state, appeared to support grant of the application in part ... they were prepared to support opening of the store at 6.00am and closing at 10.00pm on Monday, Tuesday, Wednesday, Thursday and Friday.”.

The application before this Full Bench seeks a further extension of the hours granted in B1242 of 1998. The store is currently allowed to operate during the hours 6.00am to 9.00pm Monday to Friday, 6.00am to 5.00pm on Saturdays and 10.30am to 4.00pm on Sundays. On this occasion the SDAEA has

also indicated its support of the application in part. The AWU did not oppose the application. The AWU indicated at an early stage in the proceedings that as they did not have coverage of employees at the City Express store they would probably not bring any evidence in the matter and ultimately did not participate in the proceedings once the hearing proper commenced.

We have considered all of the evidence presented by the various parties in the course of the hearing. In the circumstances we have decided to grant the application sought by the RAQ. The evidence establishes a sufficient likely usage of the extended trading hours sought. The operative date of any Order we make will be 30 October, 2000. We direct the Applicant to prepare a draft order reflecting this decision and submit it within 14 days of the release of this decision.

Order accordingly.

D.M. LINNANE, Vice President.

K.L. EDWARDS, Commissioner.

D.A. SWAN, Commissioner.

Released: 29 September 2000

Appearances:-

Mr C. J. Murdoch of counsel for the Minister for Employment, Training and Industrial Relations with him Ms R. DeCampo and Mr M. Picini.

Ms P. Spencer of the Retailers' Association of Queensland Limited, Union of Employers with her Ms S. Lindsay and Ms J. Dowding.

Mr D. Pratt of the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).

Mr C. Casey of the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

Mr R. Wotherspoon of the National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 679 – Confidential material tendered in evidence

**Queensland Nurses' Union of Employees AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Ors (No. B1019 of 1998)**

VICE PRESIDENT LINNANE
COMMISSIONERS BLOOMFIELD AND SWAN

4 October 2000

Section 679 of the *Industrial Relations Act 1999* – application for commission to direct that publication of certain evidence be prohibited – direction made.

DECISION

This is an application by the Queensland Nurses' Union of Employees (the QNU) to reopen the matter of a suppression order made in relation to this proceeding on 13 September, 2000.

Section 679(5) of the *Industrial Relations Act 1999* (the Act) gives this Commission a power to direct that evidence given, or records tendered, in proceedings be withheld from release or search. Sub-section (6) further provides that the Commission may prohibit the publication, release or search absolutely of such evidence or records. The Commission has no inherent power to suppress publication, release or search of evidence or records. Its only power to prohibit publication of evidence is the power found in s. 679 of the Act.

On 13 September, 2000 we were asked to suppress from publication, release or search the name of a nursing home against which allegations had been made by Ms Adams during the course of evidence on that particular morning. As a matter of course members of this Commission have interpreted the powers under s. 679 of the Act broadly. Traditionally parties appearing in this Commission have accepted that broad interpretation. The members of the Bench were surprised, to say the least, when the QNU opposed the request by the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (the QCCI) on behalf of Aged Care Queensland to have the name of the nursing home suppressed from publication. The QNU's opposition was even more surprising when the QNU witness who made the allegations against the nursing home indicated, to the satisfaction of members of the Full Bench, that she was in favour of the suppression of the name of the nursing home.

When the matter was argued before us on 13 September, 2000 Mr. Healy, on behalf of the QNU, submitted that disclosure of the name could not be the subject of a direction under s. 679(8) of the Act because disclosure would be in the public interest. At no time was it argued that the name of the nursing home was not evidence to which an order under s. 679 could be made. In fact Mr. Healy's opening comments were that "we have no objection to the suppression of any residents' names or any resident named who has this facility as their home". The QNU is a regular participant in this jurisdiction and we, perhaps wrongly, saw Mr. Healy's submission as an indication that the QNU was not contending that the Commission lacked power to make the order sought.

Uppermost in our minds when granting the suppression order was the interest of the patients of the nursing home and their relatives and the distress that publication of the name of the nursing home together with the allegations might cause those persons. The suppression order was made subject to further order of this Commission. The nursing home had not, at the time of the suppression order, the opportunity to answer the allegations. It was the opinion of the Full Bench that the potential for severe distress to be caused to some of the most vulnerable members of our society far outweighed the general interest in ensuring that proceedings in this Commission are able to be published.

The media has subsequently published the details of the evidence given on 13 September, 2000 without identifying the name of the nursing home.

The QNU has now sought to reopen the Commission's decision which prohibited publication of the name of the particular nursing home.

In seeking a reopening of the matter Mr. Howells for the QNU submitted that:-

- (a) the name of a nursing home was not evidence of the type that could be suppressed under s. 679 of the Act; and
- (b) even if the evidence was of a kind able to be suppressed, there was no basis under s. 679(8) for the issuing of the order.

The particular nursing home is not a party to these proceedings in the strict sense of that term. The Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers, is acting for Aged Care Queensland. The operator of the particular nursing home is a member of Aged Care Queensland. The Award sought to be varied is the *Nurses' Aged Care Interim Award – State* (the Award). The Award is a common rule award that binds operators of nursing homes in the State of Queensland that employ nursing employees. The operator of this nursing home is seeking, through Aged Care Queensland, to have the Commission dismiss the QNU's claim.

The QCCI is supported in this application by The Australian Workers' Union of Employees, Queensland, the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers, Queensland Health, the Uniting Church in Australia (Queensland Synod) and Uniting Church of Australia Property Trust and the Australian Nursing Homes and Extended Care Association of Queensland Limited.

Is the evidence of a type that can be suppressed under s. 679?

In looking at the history of the Commission's suppression power, at least from 1987 to the present, it would appear that the power to suppress publication had two aspects to it. In s. 121 of the then *Industrial Conciliation and Arbitration Act 1961-1985* subsections (1) and (2) appear to have been confined to "trade secrets of any person or the profits or financial position of any witness or party" whilst sub-section (3) provided that:–

"(3) The Court or the Commission may direct that any evidence given in proceedings before it or the contents of any book, paper or document produced for inspection shall not be published."

The power in the then s. 121(3) of the *Industrial Conciliation and Arbitration Act 1961-1985* was similar in terms to the current s. 355(5) of the *Workplace Relations Act 1996 (Cth)*. The heading to s. 121 of the *Industrial Conciliation and Arbitration Act 1971-1985* was "Trade secrets, etc., tendered in evidence". That is substantially the same heading to s. 355 of the *Workplace Relations Act 1996 (Cth)*.

Section 355(5) of the then *Industrial Relations Act 1988 (Cth)* (identical to the current federal provisions) was considered in *Optus Communications Pty. Ltd. v. Australian Postal and Telecommunications Union and Anor* (a decision of Moore D.P. of 26 February, 1991 Print K1985). There Moore D.P. said:–

"I now consider the second direction which limits the publication of documents tendered in evidence. I should make it clear that the direction does not mean that the exhibits or transcript will not be available to anyone, whether a party or not, who wishes to inspect them. Nor is it a blanket prohibition on publication in the sense that PREI can seek to have the direction varied. I accept, however, that the direction substantially limits, beyond these proceedings, the use that may be made by PREI of the evidence that has been or will be tendered.

. . . Section 355 empowers the Commission to "direct that evidence given in a proceeding before it . . . shall not be published" (s.355(5)). While the earlier sub-sections of s. 355 deal with trade secrets and evidence of profits and the financial position of a party or witness, the power to limit or prohibit publication of that material is specifically dealt with in s. 355(3). Section 355(5) appears to deal with the powers of the Commission more generally in relation to the publication of evidence and, as a matter of construction, does not appear to me to be limited to the type of evidence referred to earlier in the section. While the direction relates to both evidence already tendered and evidence to be tendered, the direction is limited to future publication. There is little doubt, in my view, that I am empowered to make the direction by s. 355(5).

While the Commission should be slow to make such a direction, I do so in this case for the reasons I earlier discussed in relation to the first direction. It is true, as was pointed out by counsel for PREI, that the evidence that was contained in the PREI newsletter was tendered without objection and no limits were sought to be imposed on its use . . . In my view, however, the use to which PREI now seeks to put this material is an abuse of the processes of the Commission. The means by which the material was obtained by those parties who tendered it involved the exercise of the coercive powers of the Commission. Those powers were exercised for the purpose of enabling PREI to conduct its case. They were not exercised by me for the purpose of enabling PREI to embark upon what appears to have some of the hallmarks of an industrial campaign amongst its membership at Aussat though to what end is unclear. If PREI wishes to publish, in a balanced way, reports of these proceedings and, in so doing, wishes to refer to exhibits I will entertain any application it might wish to make to vary the direction I have given."

On appeal the Full Bench of the Australian Industrial Relations Commission (Munro and Peterson JJ and Sweeney C, 1 April, 1992, Print K2405) said:–

"We are satisfied that Moore D.P. had jurisdiction under section 355 to issue the direction challenged. We take that view because of the terms of that section, and because of the views expressed by the former Court in the Airline Pilots Salaries and Working Conditions Case (1954-55) 80 CAR 108 at 111 which we adopt and apply to the circumstances of this Tribunal, which in this respect are not relevantly distinguishable. In that case Kirby, Dunphy and Morgan JJ considered the then section 114 of the Conciliation and Arbitration Act 1904 which was substantially similar to section 355 read in conjunction with section 339 held:–

'It is well known and salutary general principle that proceedings in Her Majesty's Courts should be conducted in public; it is also a salutary general principle that fair and accurate publication of such proceedings should be permitted in the press and in other ways. But these are principles of general application only, and apart from such inherent power which Courts may have to sit in camera where the administration of justice would be rendered impracticable by the presence of the public, many Courts have been given by statute power to sit in camera or to prohibit the publication of evidence.

The Conciliation and Arbitration Act 1904-1952 is no exception in giving to this Court powers to prevent the publication – using that word in its widest sense – of proceedings before it. Section 40(h) gives the Court power to "conduct its . . . proceedings or any part thereof in private" and section 114 paragraph (3) gives the Court power to "direct that any evidence given in proceedings before it . . . or the contents of any book, paper or document produced for inspection shall not be published." In neither case has Parliament put any restriction on the exercise of the powers which are given to the Court by these two parts of the Act; we do not think that there is any implied limitation on the power given in section 114 paragraph (3) by its appearance in a section other parts of which deal with trade secrets and "the profits or financial position of any witness or party." We may add that we apprehend that if the Court makes an order under section 114 paragraph (3) prohibiting publication, any form of publication whether by word or mouth or in any written or printed form is forbidden, and may be punished under paragraph (4) of that section. But at the same time we think that the preservation of the general principles to which we have referred, namely that proceedings should be held in public, and that fair and accurate publication of those proceedings should be permitted, are highly desirable in the public interest, and that they should only be departed from where the Court is satisfied that some unnecessary harm which the proceedings do not justify is likely to be done either to the public or to some individual or body by publicity before it makes an order under either of the parts of the Act which we have mentioned.' "

The *Airline Pilots Salaries and Working Conditions* decision in 1954-55 was available to the Queensland legislature when it enacted the then s. 121 of the *Industrial Conciliation and Arbitration Act 1961-1985*. A similar interpretation of the then s. 121(3) of the *Industrial Conciliation and Arbitration Act 1961-1985* would have been available to this Commission ie that suppression of evidence would not have been restricted to evidence of a similar category to that of "trade secrets of any person" or the "profits or financial position of any witness or party".

The change in wording to the suppression provisions in the Queensland legislation appears to have occurred with the enactment of the *Industrial Relations Act 1990*. Section 8.11 of that Act was in a somewhat similar form to the current s. 679 of the *Industrial Relations Act 1999*. At that time the heading to the section was changed to "Confidential material tendered in evidence". That continues to be the heading to s. 679 of the Act.

Once again the earlier sub-sections of s. 679 deal with trade secrets and evidence of the financial position of a party or witness. Section 679(5) gives the Commission the power to direct that evidence given be withheld from release or search. Parliament does not appear to have put any restriction on the exercise of that power.

We are mindful of the decision of the majority of the Court of Appeal in *J. v. L. & A. Services Pty. Ltd. (No.2)* (1995) 2 Qd.R 10 at 44 and the six principles outlined which were stated to be applied in the Supreme Court where evidence is sought to be suppressed. It is noted however that the principles were stated to be "subject to any statutory provision to the contrary".

We were also referred to s. 35C(1) of the *Acts Interpretation Act 1954* which provides as follows:-

"The heading to a chapter, part, division, subdivision, section, subsection, schedule or another provision of an Act forms part of the provisions to which it is a heading.

Whilst the heading to the suppression section in the Queensland legislation changed from "Trade secrets etc. tendered in evidence" to "Confidential material tendered in evidence" there is no extrinsic material available which would indicate that the legislature meant to limit the effect of s. 679 to confidential material or material of a kind similar to trade secrets or the financial position of a party of a witness.

In our view ss. 679(5) and (6) do not limit the Commission's power to evidence that could be seen to be confidential material or material in a similar category to trade secrets or the financial affairs of a party or witness. The name of the nursing home is evidence of the type that can be suppressed under s. 679(5) of the Act.

Is there a basis under s. 679(8) for the issuing of a suppression order?

Mr. Howells also submitted that there was no basis under s. 679(8) for the issuing of the suppression order. Section 679(8)(a) provides that the direction to suppress may be given if the Commission considers that disclosure of the matter would not be in the public interest.

The majority of the Court of Appeal in *J. v. L. & A. Services Pty. Ltd. (No. 2)* stated the principles to be applied in the Supreme Court when dealing with the prohibition on publication of proceedings. As previously indicated the principles were said to be subject to any statutory provision to the contrary. Those principles are as follows:-

- "1. Although there is a public interest in avoiding or minimising disadvantages to private citizens from public activities, paramount public interests in the due administration of justice, freedom of speech, a free media and an open society require that court proceedings be open to the public and able to be reported and discussed publicly.
2. The public may be excluded and publicity prohibited when public access or publicity would frustrate the purpose of a court proceeding by preventing the effective enforcement of some substantive law and depriving the court's decision of practical utility. National security provides a further special, broadly analogous exception to the requirement of open justice because of its fundamental importance to the preservation of a democratic society based on the rule of law.
3. The permitted exceptions to the requirement of open justice are not based upon the premise that parties would be reasonably deterred from bringing court proceedings by an apprehension that public access or publicity would deprive the proceeding of practical utility, but upon the actual loss of utility which would occur, and the exceptions do not extend to proceedings which parties would be reasonably deterred from bringing if the utility of the proceedings would not be affected. Courts do not have access to the information needed to determine whether or not parties are reasonably deterred by openness or publicity from bringing particular kinds of proceedings: for example, sexual complaints. Legislatures are better equipped than courts to make informed decisions on such matters.
4. No unnecessary restriction upon public access or publicity in respect of court proceedings is permissible.
5. Different degrees of restraint are permissible for different purposes. Although the categories tend to coalesce, they are broadly as follows:
 - (a) Exclusion of the public or a substantive restraint upon publicity is not permissible unless abstractly essential to the practical utility of a proceeding: for example, prosecutions for blackmail or proceedings for the legitimate protection of confidential information: cf. *R. v. Chief Registrar of Friendly Societies, Ex parte New Cross Building Society*.
 - (b) A limited exclusion or restraint is permissible if necessary to ensure that a proceeding is fair; for example, witnesses may be required to absent themselves from hearings, parts of jury trials may take place in the absence of the jury and limited or temporary restrictions on publicity may be imposed during the course of jury proceedings.
 - (c) An incidental, procedural restriction is permissible if necessary in the interests of a party or witness in a particular proceeding: for example, identities of witnesses or details of particular activities which are not directly material such as engaging in covert law enforcement operations or providing information to police may be suppressed.
6. It is the last category which gives rise to the most difficulty because of unresolved questions concerning the nature and ambit of the power. Support for a more liberal approach seems substantially confined to modern authority. Even so, information may not be withheld from the public merely to save a party or witness from loss of privacy, embarrassment, distress, financial harm, or other 'collateral disadvantage', to use the expression adopted in *R. v. Tait*. Additionally, when it is the interests of a party or a witness which is relied on as the basis for a proposed restraint, those considerations must be balanced against other factors, including the interests of others involved in the proceeding and others who may be affected. Open justice is non-discriminatory, whereas exceptions to the principle of open justice deny equal rights to the disputing litigants and provide a benefit to some litigants which is unavailable to members of the general public. Further, public scrutiny is a strong disincentive to false allegations and a powerful incentive to honest evidence, and publicity may attract the attention of persons with material information who are unaware of the proceeding. Again, as was pointed out by McHugh J.A. in *John Fairfax & Sons Ltd v. Police Tribunal of*

New South Wales, if information is suppressed 'proceedings would inevitably become the subject of rumours, misunderstandings, exaggerations and falsehoods . . .': cf. Raybos Australia Pty. Ltd. v. Jones at 59 per Kirby P., citing McPherson J. in Ex parte The Queensland Law Society Incorporated [1984] 1 Qd.R. 166, 171. A particularly unsatisfactory manifestation of this difficulty occurs when uncertainty as to the particular person concerned leads to speculation concerning other members of a relevant group. Finally, it is important to remember that what appears to be a more liberal approach involving the exercise of a discretionary power in the interest of an individual involves an erosion of fundamental rights and freedoms of the general public. The occasional misuse or abuse of these rights and freedoms or other disadvantages associated with public information and discussion, which is sometimes misinformed, together with any resultant harm are part of the cost of living in a free, democratic society. It is common for sensitive issues to be litigated and for information which is extremely personal or confidential to be disclosed. It is of obvious concern that such a paramount principle as the requirement of open justice should not be whittled away on a case by case basis according to individual judges' subjective views of the merits or demerits of the claims to privacy of individual litigants. It is also of concern that there should not be an expenditure of time, resources and costs on arguments that do not bear directly on the merits of disputes."

If there is to be a restriction on the publication of the name of the nursing home then it must be grounded upon the interests of the residents of the nursing home and their relatives and it must be called for notwithstanding that the proceedings before this Commission generally will be open and the subject of publicity. The issue is whether the identity of the nursing home should be suppressed in the public interest.

In *J. v. L. & A. Services Pty. Ltd. (No. 2)* the majority, at 46, went on to state:—

"Apart from possible health consequences from stress associated with publicity, the request for suppression is based solely upon social disadvantages which might flow to the respondents and members of their family if their medical conditions became known. Neither stress and its potentially adverse effects nor the prospects of social harm differentiates the respondents from others who have legitimate cause to wish to avoid publicity. If any distinction is to be made, it must be because of matters associated with the respondents' particular disease.

We have given anxious consideration to this question and have searched for any indication of a legislative intention that privacy should be accorded to persons such as the respondents in these circumstances...

Not without some reluctance we have therefore concluded that the sympathy which is inevitably felt for the respondents does not justify the orders which have been made despite the matters which are forcefully set out in the judgment of Pincus J.A. However, it is reasonable for the respondents to expect that the media will exhibit a sensitive consciousness of their individual and family interests and that extreme care will be taken to minimise any harm from publicity."

We doubt whether s. 679(8)(a) entitles the Commission, in the public interest, to prohibit publication of the name of the nursing home.

The Commission is however given an additional basis for any direction to prohibit publication ie. if the Commission considers that persons, other than parties to the cause, do not have a sufficient legitimate interest in being informed of the matter.

In the *Airline Pilots Salaries and Working Conditions Case* the Court determined that the public interest would not be served by certain publications reporting a distorted picture of the hazards of modern commercial aviation, as commercial flying was highly desirable, given the great distances to be travelled in Australia. The Court declined to order that the hearings proceed in camera but were prepared to order that the evidence given in relation to the flying of an aircraft be not published.

The media has published certain allegations made during the course of the evidence of Ms Adams. The nursing home has not, at this time, had the opportunity to respond to the allegations made by Ms Adams. We are of the view that should the allegations be linked to the particular nursing home it has the potential to cause the residents and their relatives great distress. The suppression order made by this Bench on 13 September, 2000 was made subject to further order by the Commission. It is open for the QNU at any subsequent time to ask for a review of the order. An appropriate time for such a review may be once the nursing home has had an opportunity to respond to the allegations made by Ms Adams. In the meantime however, we are of the view that the public does not have a sufficient legitimate interest in being informed of the name of the particular nursing home. It needs to be emphasised that we have not prohibited publication of the evidence itself – we have simply prohibited publication of the name of the nursing home in order to avoid the potential for distress to residents, their relatives and families.

We have formed the view that an order prohibiting the publication of the name of the nursing home should be continued in force at this time. We have decided to amend the order made on 13 September, 2000. The order which we will now make is in the following form:—

"This Commission, after hearing the parties to the above matter in Brisbane on 13 September, 2000 and 14 September, 2000 doth hereby direct the prohibition from publication of the name of the facility known as ... in or in connection with the evidence found in the transcript dated 13 September, 2000 as follows:—

- (i) page 820, lines 58-60 inclusive;
 - (ii) page 821, lines 1-4 inclusive;
 - (iii) page 822, lines 6-9 inclusive and lines 34-41 inclusive;
 - (iv) page 854, lines 27-32 inclusive and lines 38-42 inclusive and line 59;
 - (v) page 855, lines 1-7 inclusive;
- and in respect to Exhibit 43 paragraph 29 and Exhibit 45."

Order Accordingly.

D.M.LINNANE, Vice President.

A.L. BLOOMFIELD, Commissioner.

D.A. SWAN, Commissioner.

Appearances:—

Mr S. Howells of counsel, instructed by Mr S. Ross for the Queensland Nurses' Union of Employees.

Mr A. Hornemann-Wren of counsel, instructed by Mr S. Nance for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.

Mr C. J. Murdoch of counsel, instructed by Ms J. Leveritt for Queensland Health.

Mr A. Herbert of counsel, instructed by Mr C. Simpson for The Australian Workers' Union of Employees, Queensland.

Mr R. Reed of counsel, instructed by Ms J. Billingsley for the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

Mr S. Bennett of Deacons Lawyers for the Uniting Church in Australia (Queensland Synod) and Uniting Church of Australia Property Trust.

Mr N. Timo of the Miles Witt Partnership for the Australian Nursing Homes and Extended Care Association of Queensland Limited and Others.

Released: 4 October 2000

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 335 – application for costs**Kathleen Hinkins AND Micro Corporation of Australia Pty Ltd (B1170 of 1999)**

COMMISSIONER EDWARDS

4 October 2000

Application for Costs – Application rejected.

DECISION

On 16 March 2000, the Commission released a decision in this matter wherein the Commission accepted that Kathleen Hinkins was a “short term casual employee” and the application for reinstatement was refused. An affidavit has been received from Prior and Associates on behalf of Micro Corporation Pty Ltd (the Company) seeking costs in the sum of \$4,068.00 in accordance with the Magistrates Courts Scale F.

Section 335 of the *Industrial Relations Act 1999* provides as follows:–

“(1) The court or commission may order a party to an application to pay costs incurred by another party only if satisfied –

- (a) the party made the application vexatiously or without reasonable cause; or
- (b) for an application for reinstatement – the party caused costs to be incurred by the other party because of an unreasonable act or omission connected with the conduct of the application.

(2) In this section –

“costs” include legal and professional costs and disbursements and witness expenses.”.

The Commission provided the parties with a decision by the President 164QGIG 362-364 wherein he stated:–

“It is impossible to read into that history an intention to invigorate s. 331(c) by giving it an operation which it had not previously had but subject to a limitation in the case only of ‘applications’. I should add also that like s. 225 of the *Workplace Relations Act 1997* s. 335 makes no reference to ‘agents’. It is arguable that lay agent costs are no longer recoverable. If that be so, it would be peculiar if the previous right of a litigant to seek costs of a lay ‘agent’, apparently removed by s. 335, were found to be seamlessly reinstated by a construction of s. 331(c) which cannot be traced to express words.”.

On 11 September 2000 the Commission received a telephone message from Matthew Reynolds which indicated:–

“If the decision goes against, Micro Corporation of Australia Pty Ltd will bring further application against Hinkins. Already spent \$6000.00.”.

On 14 September 2000 the matter was listed to give the parties the opportunity to be heard on the comments of Mr Reynolds. No party wished to make any submission.

As a result of my decision 163 QGIG 409-410 the Company was seeking costs to be awarded against Mr Royce (as agent) or alternatively Kathleen Hinkins. Ms Hinkins received correspondence from the Industrial Registrar and communicated with the Department of Employment, Training and Industrial Relations. The Commission is satisfied that an application under s. 335(1)(b) is warranted. The Commission has given consideration to the definition of costs and acknowledges the comments of the President in regard to agents.

The historical practice that each party bear their own costs has been considered. Since 1990 a move to contemporary industrial relations enabled changes. Under the *Workplace Relations Act 1997* costs were awarded on a number of occasions. The *Industrial Relations Act 1999* has provided a framework for the question of costs to be managed in a revised manner.

On consideration of the provisions of the *Industrial Relations Act 1999* the application for costs is rejected.

The Commission orders accordingly.

K L. EDWARDS, Commissioner.

Appearances:–

Mr S. Royce of Australian Industrial Reinstatement Services on behalf of the Applicant.
Ms K. Prior of Prior and Associates on behalf of the Respondent.

Released: 4 October 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 331(b) – application to dismiss or refrain from hearing**Department of Education AND Mark Svenson (No. B1244 of 2000)**

COMMISSIONER FISHER

4 October 2000

Application to dismiss or refrain from hearing – Contract of employment – Contract not fixed term – Offered further work – Workers compensation – No remedy – Public Interest – Application B1589 of 1999 dismissed.

DECISION

By application B1244 of 2000 the Department of Education has sought the Commission to dismiss or refrain from hearing the dismissal application of Mark Svenson (Case No. B1589 of 1999). The application was made pursuant to s. 331(b) of the *Industrial Relations Act 1999*.

The reasons for the Department's application could be summarised as follows:-

- (i) Mr Svenson was employed under a contract for a specific period of time *viz.*, 9 February 1999 to 17 December 1999. In that case, Mr Svenson is excluded by s. 72(1)(d) of the Act from bringing the application.
- (ii) In the alternative, the application should be dismissed on the basis that proceedings are not necessary or desirable in the public interest. The basis for that contention is that no remedy is available.

The argument regarding being excluded from bringing the application is unsustainable. Mr Svenson was engaged as a full-time teacher on a temporary basis. His letter of appointment states that:-

"This temporary appointment may be terminated by yourself or this Department by the giving of one weeks notice, in writing."

This is in fact what happened. Mr Svenson's appointment was terminated on 15 November 1999, approximately one month shy of the expiration of the temporary engagement.

That the temporary engagement was terminable on notice is indicative that the engagement was not one for a fixed term. (see *Anderson v Umbakumba Community Council* (1994) 57 IR 238).

The Department's other claim that the Commission dismiss or refrain from hearing the dismissal application has merit. The Department submitted that the remedies available under the Act to a successful applicant are reinstatement or re-employment (s. 78) or compensation (s. 79).

The primary remedy is reinstatement or re-employment. This is so because s. 79 requires the Commission to only consider compensation after considering whether reinstatement or re-employment would be impracticable.

This is not a case where Mr Svenson can succeed in obtaining the primary remedy. Despite my finding that Mr Svenson was not engaged on a fixed term contract within the meaning of s. 72(1)(d) of the Act, it remains that his employment would have been at an end on 17 December 1999, had his engagement been allowed to run its course. That is to say his engagement as a temporary teacher would have ended with the effluxion of time. It may be more appropriate to characterise his employment contract as a maximum period contract.

Because the end date of his period of engagement has long passed it would be impossible, rather than merely impracticable, to reinstate Mr Svenson to his former position, should the dismissal be found to be harsh, unjust or unreasonable.

Is re-employment a practicable option? For the reasons just stated re-employment for the balance of the engagement is not also possible. Is the Commission required to consider re-employment in a position in the future, that is, is it reasonable for the Commission to order the Department to re-employ Mr Svenson in some other position at some future time which would require a new contract for a fixed or maximum period to be struck. Mr Svenson's employment history shows he has performed work for the Department over a period of 17 years. This employment has not been continuous nor served on one contract. He has been engaged on a number of contracts over that time. Additionally, his record reveals he has resigned his employment on these separate occasions. In all, several breaks of service have occurred. No further work had been guaranteed or offered to Mr Svenson once his last engagement as a full-time temporary teacher had ended.

In any event, Mr Svenson has been offered and has accepted a further engagement with the Department. Although that too has concluded, the offer of further work shows the Department has not held the dismissal against Mr Svenson. But this does not mean the Commission ought to consider ordering re-employment were Mr Svenson found to have been dismissed harshly, unjustly or unreasonably. The circumstances of Mr Svenson's engagement as a temporary teacher had specific limits which have been exceeded. To require the employer to re-employ an employee after the end point engagement had passed and where no further work had been promised nor was any implicit in the contract of employment would seem to me to be outside the reasonable exercise of the Commission's powers.

For these reasons the primary remedy of reinstatement or re-employment would not be available. This leaves the remedy of compensation.

In this case this remedy is also not available. Shortly after his dismissal Mr Svenson applied to reopen a claim for workers compensation. This claim was accepted from 12 November 1999 and compensation was paid to 17 May 2000, a period of six months. Mr Svenson would not therefore be entitled to compensation under s. 79(2) of the Act. His solicitor concedes this point.

Taking all of the circumstances into account the remedies under the Act are not available to Mr Svenson.

In considering whether to dismiss or refrain from hearing a dismissal application the Commission has tended to examine amongst others, the principles which have been modelled on principles applied by the Commission in determining applications for extensions of time (see *Jones v Hilton International Brisbane* (1995) 149 QGIG 1255). The relevant considerations in this case appear to be:

- (i) the prejudice to the application (Svenson) if the proceedings are terminated or stayed;
- (ii) the prejudice to the respondent if the proceedings are permitted to continue;
- (iii) the conduct of the respondent;
- (iv) general considerations of public interest.

In the course of the hearing the applicant's solicitor adverted to a number of issues, both substantive and procedural which were of concern to them. The Commission in a formal setting has had no opportunity to consider any of these matters but superficially at least, there appears to be some basis to these concerns. Mr Svenson would lose the opportunity to ventilate these concerns and to have findings made with respect to them were the Commission to grant the Department's present application. Mr Svenson would also lose the opportunity of having the Commission make a decision regarding the fairness or otherwise of his dismissal. Balanced against this is the Department's demonstrated preparedness to continue to offer Mr Svenson further work despite the dismissal.

This case has been listed for five days of hearing should the Commission decide not to dismiss or refrain from hearing the application. This may be an underestimate. Clearly the Department will be put to significant cost in having to defend the case. This would seem to be a drain on the public purse when no remedy is available.

Nothing has been put to me about the Department's conduct to suggest that it has acted unreasonably. It has attended several conciliation conferences before the Commission and engaged in discussions with Mr Svenson's various representatives in an endeavour to settle the matter. Indeed, Mr Svenson's several changes of representation have not assisted the conciliation process nor the overall conduct of the case. The situation is more one where the conduct of Mr Svenson would militate against the application being allowed to proceed to a hearing. Ultimately, however it has not been necessary for any weight to be placed on this issue.

The issues of public interest are the ones of significance in this case. Reference has already been made to the effect on public monies to have this case go to hearing. That Mr Svenson is unable to ultimately receive a remedy from the Commission combined with no disadvantage being caused to Mr Svenson's future employment with the Department satisfies me the public interest would not be served by having the dismissal application proceed to hearing. Accordingly, I determine to dismiss application B1589 of 1999.

Dated this fourth day of October, 2000.

G.K. FISHER, Commissioner.

Appearances:-

Ms B. McDonald on behalf of the Department of Education.

Released: 4 October 2000

Mr J.C. Dwyer (of Reidy & Tonkin) on behalf of Mr M. Svenson.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 74 – application for reinstatement

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees
AND Victoria Point Early Learning Centre (No. B396 of 2000)**

COMMISSIONER BROWN

3 October 2000

DECISION

On 21 March 2000, the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees (ALHMU) filed an application on behalf of Meleeta Morgan (Morgan) for reinstatement to her former position with Victoria Point Early Learning Centre (the respondent) without loss of wages.

The Commission was satisfied that all attempts to resolve the matter by conciliation were or were likely to be unsuccessful.

Ms J. Billingsley for the ALHMU represented Morgan and Mrs L. Pahwa the respondent.

Leave was granted for Suresh Pahwa, witness for the respondent and principal of the respondent to remain in the Court Room to assist Mrs Pahwa.

Further, following the conclusion of the hearing, while reviewing the documents associated with the hearing, it became apparent to the Commission that the application was lodged against a business name, whilst the separation certificates included in the case material nominated Tewin Wood Pty Ltd as the employer.

To overcome the uncertainty on the question of who the respondent actually was, the Commission re-opened to take submissions on the matter.

Once the correct name of the respondent was established, Tewin Wood Pty Ltd t/a Victoria Point Early learning Centre, the Union sought leave to amend the application accordingly.

Having regard to s. 272(2)(b) and being satisfied that neither the case for the applicant nor the respondent would be affected by such an amendment, leave was granted.

Leave was also granted to the ALHMU to allow the application to be amended to include s. 73(2)(k) Discrimination as an invalid reason allegedly involved in the dismissal.

Morgan gave evidence to the effect that she had been employed at the Centre in various capacities since 1997. During 1998/99 she took maternity leave and upon her return having been offered the choice between full-time and casual work, opted voluntarily for a casual position commencing 20 October 1999.

Details of this arrangement were contained in an agreement submitted as an attachment to Ex I and signed by Morgan, the Director and the Owner of the Centre. This agreement set out certain aspects of the employment relationship.

In early December 1999, Morgan met with Jarmila Venzura (Venzura), Director of the Centre, and Suresh Pahwa during which Morgan was told they were pleased with her work and discussed the possibility of a traineeship.

On 6 January 2000 an incident occurred following a telephone call to the Centre by Morgan's husband. Morgan's evidence was that Suresh Pahwa was upset and raised his voice over the issue of private calls. Upon returning her husband's call during her break, her husband advised her that her daughter was ill. In the mean time both Suresh Pahwa and Venzura apologised to Morgan for the earlier exchange.

Morgan claims that she advised Glenys Grey, the Group Leader in one of the rooms she was working in, that she was leaving. She also claimed that at the time she was upset by all of the circumstances.

Morgan stated she told Suresh Pahwa and Venzura that she wanted to go home, asked the whereabouts of the sign-out book and when advised of its unavailability told Suresh Pahwa to remember when she left and to let the Director know to sign off for her.

Morgan denied resigning.

Morgan reported for work the following day and was informed by Venzura of a roster change that would see her with no hours of work for the following week and that Morgan would be called when needed.

Morgan finished the shift in progress and has not worked since.

Morgan acknowledged that the Centre had been supportive of her in the past during her pregnancy. Morgan had seen, but could not recall, details of the Centre's telephone policy.

Morgan also acknowledged that her advice to others regarding her leaving the Centre amounted to a statement rather than a request.

Renee Galea-Hedberg (Hedberg) gave evidence that she heard shouting but did not know exactly what was said. She claimed that Morgan was upset when she left the Centre. She submitted that Morgan told her that she was intending to leave early but did not advise her of her departure at the time.

Hedberg produced a reference for Morgan with the approval of Venzura. Venzura changed some elements but withheld the reference because of the court case.

Heather Hayes, an organiser with ALHMU, gave evidence that no separation certificate was sought until the respondent stated that Morgan was dismissed. To Hayes' knowledge the respondent did not advise Morgan of her dismissal. Hayes stated she had made several phone calls to the Centre on Morgan's behalf and she declined an offer to interview staff during a wage inspection on 15 March 2000.

Hayes recounted a phone conversation with Suresh Pahwa on 14 January 2000 where he advised that as numbers were down at the Centre, no hours were available for Morgan. He also stated that Morgan was not dismissed and would be placed back on the roster when numbers permitted.

On 2 March in a further conversation with Suresh Pahwa, Hayes was advised that Morgan was dismissed as she was not suitable as a child care worker and that she had abandoned her employment by going home without permission and that she was too much trouble.

Hayes claimed that since January the Centre was performing more hours of care with extra staff.

The respondent called Suresh Pahwa to give evidence.

He agreed with Morgan's account of her employment history up to 6 December 1999. However, he did not agree that firm arrangements had been made regarding Morgan's proposed traineeship.

His evidence was that Morgan was somewhat inflexible over hours, which caused some friction amongst staff. He claimed he had raised concerns with Morgan that the abnormal number of personal phone calls were becoming disruptive and both he and Venzura resolved to speak with her if it continued.

On 6 January 2000 during a meeting with Venzara, Suresh Pahwa stated he witnessed a phone call taken by Venzara. The caller was Morgan's husband, who without argument, accepted that a message to return his call would be passed to Morgan. This prompted a meeting between Suresh Pahwa, Venzara and Morgan whereupon Suresh Pahwa advised Morgan, that in his opinion, she was receiving too many calls and to minimise them. Morgan became emotional, started yelling and left the office. After Venzara's attempts to calm her, Morgan returned to the office, commented on the way Suresh Pahwa had spoken to her and told him that she was going home. He claimed Morgan did not mention her sick child.

Suresh Pahwa contended that Morgan did not ask for the sign-out book nor did she ask anyone in authority if she could leave. Morgan had in his view abandoned her position, failed her duty of care and left the Centre unable to meet its child/staff ratio, thus endangering children's safety.

This evidence was at odds with that of the Director, Venzara, who stated that her personal intervention ensured that the centre met its obligations.

When Morgan returned to work on 7 January 2000, Suresh Pahwa and Venzara decided to leave her in her position rather than confront her thereby risking another outburst and the accompanying side effects.

Suresh Pahwa raised his concerns about Morgan with Venzara, namely her behaviour, unreliability, lack of commitment, limited number of roles able to be performed, limited hours and lack of qualifications.

Although Suresh Pahwa claimed that Morgan had abandoned her post, he agreed that Morgan was told that she was not required the following week as the staff she was replacing returned from holidays and children numbers were low. She was informed the respondent would call her if the numbers improved. The enrolments remained low in the following months.

Suresh Pahwa was unable to explain the differing separation certificates or why one appeared to have been altered with respect to the reason for termination.

Jarmila Venzara was Director of the Centre during the period under review.

Her evidence supported that of Suresh Pahwa regarding the employment history of Morgan.

Venzara put the number of calls per day for Morgan at 1 to 2 as against Suresh Pahwa's evidence of 5 to 6.

Venzara supported Suresh Pahwa's version of events of 6 and 7 January 2000. She confirmed Morgan's evidence that Suresh Pahwa's voice was "louder than usual" during the phone issue discussion. She confirmed phone use was regularly discussed in staff meetings.

Venzara did not allocate hours to Morgan the following week but advised her that she would call her if the numbers improved. The numbers did not improve in the following weeks.

Kelly Tennant, a co-worker, gave evidence that on 6 January she observed that Morgan was upset but she was not aware of the reason. She claimed that Morgan stated to her, words to the effect, that "I should just quit". Under cross-examination she equated this to thinking out loud.

Tennant believed Morgan had resigned and informed her mother, also a co-worker, of this. Both were surprised to see Morgan at work on 7 January.

Conclusions

On Morgan's return to work on 7 January 2000, the respondent failed to properly clarify its position with regard to Morgan's employment.

In saying this, the evidence shows that the respondent failed to advise Morgan of its true opinion of her performance and conduct of 6 January 2000 and of its true opinion of her suitability as a child care worker. In so doing the respondent failed to allow Morgan to properly consider and respond to any allegations.

Instead, on 7 January 2000 the respondent, with no expression of concern to Morgan over the previous day's events, simply advised Morgan that, due to staffing and child numbers, she would be given no hours in the following week, but would be contacted in the event of an upturn in demand.

At that point Morgan was entitled to presume that the employment relationship was intact despite the previous day's events.

With the passage of time and in the absence of any contact from the respondent, Morgan, through her Union, sought clarification of her position.

I accept the evidence of Hayes that a separation certificate was requested only after the respondent confirmed to her that Morgan was dismissed.

Despite the fact that the respondent's evidence that Morgan was a good employee and that she would be given casual work when the opportunity arose, the separation certificate recorded the reason for termination as "unsuitable for this type of work". I draw no conclusions from the fact that 2 certificates were issued or that I appeared to have the reason for termination altered.

However, in light of the evidence, it is, to say the least, surprising that the reason for termination was not recorded as "shortage of work".

In this light and having considered the evidence and submissions, I am satisfied that the true reason for Morgan's termination was dissatisfaction with her performance and conduct emanating from the incident on 6 January 2000 and a view that she was not a suitable employee in child care.

Section 77 of the Act requires that the Commission must consider, if the dismissal related to the employee's conduct, capacity or performance whether the employee had been warned about the conduct, capacity or performance or whether the employee was given an opportunity to respond to the allegations about the conduct, capacity or performance.

In considering whether the employee had been warned regarding conduct, capacity or performance, I must have regard for the fact that the respondent decided not to confront Morgan with their views and concerns, instead they allowed her to finish her shift with the understanding that she would be contacted when work was available and made no subsequent attempt to clarify the situation.

The reason given was that they feared a volatile reaction from Morgan of the sort that would disrupt the Centre if they raised matters with her.

The ease with which arrangements could have been made to discuss these matters away from the children or the Centre is obvious, yet no effort was made by the respondent to this end.

Appended to Ex. 1 is the agreement between Morgan and the respondent relating to continuing terms of employment. The parties acknowledged both the existence and the status of the document in regulating the issues referred to in it.

Importantly, Morgan was required to sign to acknowledge that the terms of employment would be re-evaluated each 12 months.

In that the agreement was entered into on 21 October 1999 (the date Morgan's signature was witnessed by the respondent) the terms of the agreement were in force at all times during the events leading up to this matter.

The document records Morgan's status as a casual assistant working 12 hours per week at \$12.98 per hour.

The respondent failed to notify Morgan of their concerns in writing in line with the requirements of the agreement and they further failed to provide Morgan with the notice period therein referred to (although the exact amount is not clear).

In considering the evidence in line with s. 77, I find that the respondent failed to warn Morgan about her conduct, capacity or performance.

With regard to whether the employee was given an opportunity to respond to the allegations about conduct, capacity or performance, the evidence was that the Union was eventually advised that Morgan was dismissed. At no time prior to this was Morgan advised that she was dismissed, and consequently was not given an opportunity to respond.

Having regard to all of the evidence and submissions, I am satisfied that Morgan's dismissal was harsh, unjust and unreasonable and in the circumstances, unfair.

With respect to the proposition in the amended application that the dismissal was for an invalid reason, I am satisfied that during the emotion charged atmosphere surrounding the events of 6 January 2000, it is possible that Suresh Pahwa did not understand that Morgan's departure was due to family reasons.

Therefore, I am satisfied that discrimination on the basis of family responsibilities was not present in the dismissal, hence the submission that the Respondent pay Morgan 135 penalty units is rejected.

Morgan has not worked at the Centre since early January 2000, a period in excess of 7 months. It is obvious from the evidence that staff numbers in the Centre equate to the number of children in care and the amount of time they are in care. It is also obvious that the work available is currently being covered by existing employees. Time has marched on. Reinstatement of Morgan would displace an existing employee.

I am further satisfied on the evidence that the level of trust and confidence needed for a productive relationship is lacking.

For these reasons, I am not inclined to order reinstatement but rather to compensate Morgan pursuant to s.79 of the Act.

With regard to compensation, I have taken into account the length of service of Morgan and the events which led to the breakdown in the relationship.

I have also taken into account the efforts of Morgan to mitigate her loss (Para. 12 Ex. 2) and have decided to order that the respondent pay to Morgan, within 22 days of the date of publication of this decision, an amount equivalent to 16 weeks pay calculated at the number of hours contained in the employment agreement annexed to Ex. 1, that being 12 hours per week at the hourly rate of pay for a casual as at 2 March 2000, or the hourly rate contained in the agreement of \$12.98 per hour, whichever is the greater.

Order accordingly.

D.K. BROWN, Commissioner.

Appearances:-

Mrs L. Pahwa for Tewin Wood Pty Ltd t/a Victoria Point Early Learning Centre.

Ms J. Billingsley for the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

Released: 4 October 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 149(2)(b)(i) – arbitration if conciliation unsuccessful

Department of Education AND Queensland Teachers Union of Employees and Others (No. B458 of 2000)

COMMISSIONERS EDWARDS, SWAN AND BROWN

7 September 2000

INTERIM ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 30 May, 1 and 7 September 2000, this Commission doth Order that the following be agreed matters between the parties as at 7 September 2000 with a final determination being incorporated into a particular instrument at the conclusion of the arbitration:-

DEPARTMENT OF EDUCATION TEACHERS' AGREEMENT 2000

PART 1: APPLICATION AND OPERATION

1.1 Title

This Agreement shall be known as the *Department of Education Teachers' Agreement 2000*.

1.2 Arrangement

Subject Matter

Clause No.

PART 1 – APPLICATION AND OPERATION

Title	1.1
Arrangement	1.2
Application.....	1.3
Date and Period of Operation	1.4
Posting of Agreement	1.5
Relationship to Awards and Industrial Agreements.....	1.6
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PART 3 – CONSULTATIVE ARRANGEMENTS

Collective Industrial Relations	3.1
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PART 4 – MATTERS FOR ARBITRATION

PART 5 – WORKPLACE REFORM INITIATIVES

Teaching and learning.....	5.1
School Based Management.....	5.2

PART 6 – BUS AND PLAYGROUND DUTY

PART 7 – PROMOTIONAL POSITIONS

Review of Evaluation of Promotional Positions	7.1
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Subject Matter

Clause No.

PART 8 – UNION ENCOURAGEMENT PROVISIONS**PART 9 – RELEASE FROM NORMAL DUTIES FOR WORKPLACE HEALTH AND SAFETY REPRESENTATIVES/ OFFICERS AND SEXUAL HARASSMENT REFERRAL OFFICERS**

Workplace Health and Safety Representatives/Officers	9.1
Sexual Harassment Referral Officers	9.2

PART 10 – SALARY PACKAGING**PART 11 – SERVICES TO REMOTE AREA SCHOOLS****PART 12 – INDUSTRIAL RELATIONS EDUCATION LEAVE****PART 13 – ILO CONVENTIONS****ATTACHMENT 1 – AWARD COVERAGE****1.3 Application**

- 1.3.1 This Agreement shall apply to the Director-General of Education as Chief Executive Officer of the Department of Education and those employees engaged under the *Teachers' Award – State* and Community Teachers, Assistant Teachers – Aboriginal and Torres Strait Islander Community School Award – State and the Queensland Teachers Union of Employees and The Queensland Public Sector Union of Employees.
- 1.3.2 Employees engaged under the *Teachers' Award – State* located at the Office of the Board of Teacher Registration, Office of the Queensland School Curriculum Council and Office of the Tertiary Entrance Procedures Authority are covered by this Agreement.

1.4 Date and Period of Operation

This Agreement shall operate from 1 March 2000 and shall remain in force until 28 February 2003. Initial wage increases shall apply from the dates provided in clauses 2.1 and 2.2 of this Agreement.

1.5 Posting of Agreement

A copy of this Agreement shall be exhibited in a conspicuous and convenient place in all workplaces covered by this Agreement so as to be easily read by all employees.

1.6 Relationship to Awards and Industrial Agreements

Subject to the State Wage Case Decision of 1999 and Queensland Industrial Relations Commission Wage Fixation Principles, this Agreement shall be read in conjunction with existing awards, industrial agreements and policies covering employees of the Department of Education engaged under the *Teachers' Award – State*. In the event of any inconsistency with existing awards and agreements, the terms of this Agreement will take precedence. Attachment 1 lists relevant awards and agreements affected by the implementation of this Agreement.

1.7 Continuation of Provisions in Previous Certified Agreements

- 1.7.1 Subject to this clause the parties agree that the provisions of the Department of Education, Operational Areas Certified Agreement 1994, Department of Education Certified Agreement 1997, and the Teachers (Enterprise Bargaining) Award – State will continue to apply as if they were part of this Agreement, unless specifically overridden or unless inconsistent with any provision in the case of the 1994 Certified Agreement, in the 1997 Certified Agreement or in the case of the 1994 and 1997 Certified Agreements in this Agreement.
- 1.7.2 The parties reiterate their commitment to the productivity, service enhancement and long term reform initiatives agreed to within the *Department of Education – Operational Areas – Certified Agreement 1994* (CA 308 of 1994) and in particular those items at clauses 1.4 and 4.7 of the *Department of Education Queensland Certified Agreement 1997* as follows:
- workplace reform initiatives including a best practice approach, school based management pilots and the Workplace Reform in Schools Program;
 - variation of placement of hours of instruction, the practice of moderation duties to be undertaken on October pupil free day, the review of processes and procedures relating to probation for all employees and the continuation of the practice that all employees will continue to be subject to the same disciplinary policy and processes including the right of the employer to redeploy or suspend in certain circumstances provided that all employees who are suspended shall have the right to lodge a fair treatment appeal;
 - school management including school based management initiatives; reduction of energy costs by 10 percent; and the continued enhanced utilisation of workplace health and safety officers, and review measures to assist workers to meet family responsibilities;
 - workforce management initiatives including the continuation of:
 - the incorporation within normal responsibilities of the allowances for teachers with grade 8 – one teachers schools and the first aid allowance;
 - provision for the secondment allowance under the *Teachers' Award -State* to be adjusted so that it is commensurate with the allowance paid to a 3 year trained senior teacher. The secondment allowance should be adjusted in line with the increases to the senior teacher allowance provided that teachers who are currently receiving a higher amount shall continue to receive that amount for the life of this Agreement;

- (iii) utilisation of EFT for all permanent employees;
 - (iv) abolition of pay in advance for annual leave and school vacation periods;
 - (v) consolidation of leave loading;
 - (vi) broad banding arrangements;
 - (vii) position re-evaluation arrangements;
 - (viii) review of evaluation arrangements and the payment of language allowances as specified;
 - (ix) reduction in absenteeism.
- (e) Professional development and training will operate within the following principles:
- (i) the parties agree that quality professional development and training are essential for employees to maintain appropriate skill levels and to efficiently and effectively respond to the changes in the workplace;
 - (ii) the parties commit to the department's professional development and training agenda for leaders and professional development and training for teachers on the basis of a shared responsibility of the individual and the department;
 - (iii) the parties agree professional development and training agenda is an essential component of school based management. The provision of quality professional development and training will assist all staff in efficiently and effectively responding to the challenges of Queensland school based management;
 - (iv) the parties are committed to the implementation of the comprehensive professional development and training agendas that have been developed. For teaching staff, the parties are committed to:
 - (A) the involvement of teachers in an annual program of professional development and training. This may comprise activities scheduled for pupil free days, programs during rostered duty time (with appropriate relief arrangements) and activities voluntarily undertaken outside rostered duty time;
 - (B) the implementation of new syllabuses produced by QSCC and Board of Senior Secondary School Studies; and
 - (C) the incorporation of information technology in the classroom teaching and learning program which will be the focus for professional development activity by teaching staff and the department.
 - (v) wherever practicable, for all other school staff, professional development and training should generally occur outside student contact hours but in normal working hours within school vacation periods. Staff and their supervisors should establish appropriate mechanisms to plan and access programs designed to increase skill levels.

1.7.3 The parties reiterate their commitment to the provision of quality education services for all state school students in Queensland through the initiatives agreed to within the *Department of Education Queensland Certified Agreement 1997*.

1.8 Objectives of this Agreement

1.8.1 The purpose of the Department of Education is the provision of quality education services for all state school students in Queensland.

1.8.2 Within this context, the goals of the Department of Education are:

- * quality curriculum programs for all students;
- * effective teaching;
- * improved learning outcomes for students;
- * a skilled, confident and responsible workforce;
- * confidence in public education;
- * adoption of technology to enhance teaching, learning and management; and
- * a safe, supportive and productive working and learning environment.

1.8.3 The achievement of these goals is impossible without the commitment and recognition of teachers.

1.8.4 The parties are committed to the achievement of these goals through:

- * the implementation of teaching and learning priorities for the life of the agreement;
- * implementation of quality curricula;
- * the achievement of Best Practice in teaching and learning;
- * enhanced assessment and reporting of student learning outcomes;
- * introduction of new school based planning, management and accountability frameworks;

- * identification and implementation of effective behaviour management strategies;
- * the use of technology in schools and classrooms to achieve enhanced teaching and learning achievements and for management;
- * payment of salary increases to attract and retain teachers as employees in the Department of Education who are qualified and are of the highest standard.

1.9 Equity Considerations

- 1.9.1 This Agreement will achieve the principal objects specified in sections 3(c), 3(d) and 3(m) of the *Industrial Relations Act 1999*. The parties will respect and value the diversity of employees through helping to prevent and eliminate discrimination. The parties are committed to the principles of equity and merit.
- 1.9.2 In addition, the effect of this Agreement is not to allow any conduct or treatment, either direct or indirect, that would:
- (a) contravene the *Anti-Discrimination Act 1991*; or
 - (b) discriminate on the basis of family responsibilities.
- 1.9.3 It is the intention of the parties to jointly monitor the implementation of changes as a result of this Agreement to ensure that there is no adverse impact in terms of existing equity provisions or in terms of creating any new situation of inequity. A report will be prepared on the implementation of enterprise bargaining and in particular its impact on target groups in the annual departmental Equal Employment Opportunity Management Plan.

1.10 Definitions and Abbreviations

“Employee” – means all permanent, temporary and casual persons employed by the Department of Education pursuant to and within the meaning of the Teachers’ Award – State, Community Teachers, Assistant Teachers – Aboriginal and Torres Strait Islander Community Schools Award – State and the *Public Service Act 1996*.

“Professional Development” – means a self-motivated vocational process undertaken by an individual.

“Training” – means a systemically initiated activity aimed at providing employees with required new information or skills.

“ECC” – means the Educational Consultative Committee.

“LCC” – means the Local Consultative Committee.

“FBT” – means the Fringe Benefits Tax.

“GST” – means the Goods and Services Tax.

PART 2 – WAGES

2.1 Wage Increases

This Agreement provides for the payment of increases of amounts to be determined by the Queensland Industrial Relations Commission by determination under s. 149 of the *Industrial Relations Act 1999*, with the first installment payable from 10 April 2000.

The initial wage increases to be paid shall be based on the final rates payable under the Department of Education Queensland Certified Agreement 1997 (CA717 of 1997).

2.2 Additional Wage Increases – Administrators Bands 4 to 7

- 2.2.1 All classified officers in Bands 4 to 7 shall, in addition to any increases prescribed by the determination of the Queensland Industrial Relations Commission under s. 149 of the *Industrial Relations Act 1999*, receive additional salary increase in three installments:
- (a) 2% to be paid from 1 July, 2000;
 - (b) 2% to be paid from 1 July, 2001; and
 - (c) 1% to be paid from 1 July, 2002.
- 2.2.2 The wage increase to be paid under this provision on 1 July, 2000 shall be based initially on the final rates payable to these officers under the Department of Education Queensland Certified Agreement 1997 (CA717 of 1997) and adjusted to reflect a 2% increase on the rates payable from 10 April 2000 once the s. 149 determination has been made.

2.3 No Further Claims

- 2.3.1 This Agreement constitutes a closed agreement in settlement of all matters specified within it for its duration.
- 2.3.2 Subclause 2.3.1 does not apply to wage increases or changes in conditions arising from:
- (a) the reclassification of positions by the Department arising from re-evaluation of positions, structural change or job re-design;
 - (b) incremental progression under relevant awards;
 - (c) review of the Remote Area Incentive Scheme;

(d) the following claims being considered by the Industrial Relations Commission:

- (i) casual loading;
- (ii) review of long service leave; and
- (iii) incremental progression for permanent part-time teachers.

and

(e) any review of awards under s. 130 of the *Industrial Relations Act 1999*.

2.3.3 Nothing in this clause however, shall prevent the union/s applying for establishment of conditions to apply to teachers employed in conjunction with Department/Government initiatives e.g. the establishment of P-12 schools, or pursuing improved resources for schools in the context of budget considerations.

2.3.4 The parties agree to recommence negotiations no later than eight months prior to the expiry of this Agreement with a view to negotiating and settling a replacement agreement.

2.3.5 The parties agree:

- (a) From 1 July 2000 the ECC will monitor the impact that the introduction of the Goods and Services Tax (GST) has on employees covered by this Agreement. This will include a review to be conducted for the ECC of the effects of the introduction of the GST for the period of 12 months from 1 July 2000. Further, the ECC may review the impact that the GST has on employees covered by the agreement after July 1 2001.
- (b) Should there be any significant inflationary or economic developments due to the introduction of the GST, across the life of this Agreement which negatively impacts on employees generally (taking into consideration any compensation provided by A New Tax System through tax cuts or transfer payments), leave is reserved for the parties to discuss the impact on the intent of wage increases in this Agreement, and if necessary and by agreement of the ECC, vary this Agreement in accordance with the provisions of the *Industrial Relations Act 1999*:
- (c) Provided that where agreement cannot be reached by the ECC, the procedures contained within this Agreement for the prevention and settlement of disputes will apply including access to the Queensland Industrial Relations Commission as set out in clause 3.7.4 (d).

2.4 Award maintenance

It is agreed that during the operation of this Agreement the parties will consent to applications before the Queensland Industrial Relations Commission to vary the following awards to include the salary rates and workplace reform initiatives of the Department of Education Queensland Certified Agreement 1997 (CA717/97) and Teachers (Enterprise Bargaining) Award – State:

- Teachers' Award – State
- Teachers (Enterprise Bargaining) Award – State
- Community Teachers, Assistant Teachers – Aboriginal and Torres Strait Islander Community Schools Award – State;
- Permanent Part-Time Teaching in State Schools Industrial Agreement;
- Specialist teachers in State Primary and Special Schools Industrial Agreement;
- Practice Teaching in State Schools Industrial Agreement.

PART 3 – CONSULTATIVE ARRANGEMENTS

3.1 Collective Industrial Relations

- 3.1.1 Structured, collective industrial relations will continue as a fundamental principle of the management of Education Queensland. This principle recognises the important role of unions and the traditionally high levels of union membership in the public sector. It supports constructive relations between management and union and recognises the need to work collaboratively with relevant union and employees in an open and accountable way.
- 3.1.2 The government as an employer recognises that union membership and coverage issue are determined by the provisions of the *Industrial Relations Act 1999* and any determinations of the Queensland Industrial Relations Commission.
- 3.1.3 The government is committed to collective agreements and will not support non-union agreements, QWAs or AWAs for employees covered by this Agreement.
- 3.1.4 Consistent with principles established by a full bench of the Queensland Industrial Relations Commission, the government will agree to support the “rolling up” of enterprise bargaining wage rates into the relevant awards.

3.2 Education Consultative Committee

The Education Consultative Committee (ECC) for the purposes of this Agreement comprises representatives of the Department of Education as the employer, and representatives from the Queensland Teachers' Union of Employees, The Queensland Public Sector Union of Employees, the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

3.3 Consultative Arrangements

- 3.3.1 Consultative arrangements were developed and implemented in accordance with the provisions of the *Department of Education – Operational Areas – Certified Agreement 1994* and continued in the *Department of Education Queensland Certified Agreement 1997*.
- 3.3.2 Parties are committed to the continuation of appropriate consultative arrangements so that employees are consulted in the initiation, implementation and evaluation of workplace reform initiatives.

- 3.3.3 Education Queensland acknowledges the role of the Local Consultative Committee (LCC) and the Education Consultative Committee (ECC) as mechanisms to facilitate workplace reform initiatives. Decisions of the LCC are to be made by consensus wherever possible.
- 3.3.4 Such consultation arrangements should be consistent with the following broad principles to ensure effectiveness and equity:
- (a) consultative mechanisms should ensure that, in addition to the parties to this Agreement, there is employee involvement on the initiation, implementation and evaluation of proposals for productivity improvements;
 - (b) appropriate processes should be in place to consult employees who are affected by proposed productivity items;
 - (c) consultative arrangements should encompass all work areas in the Department of Education;
 - (d) the composition of consultative forums should take account of representation of the target groups identified in the *Equal Opportunity in Public Employment Act 1992*;
 - (e) consultative arrangements should be subject to review from time to time by the parties and improvements and changes to arrangements made as required and agreed to ensure consultative arrangements operate with maximum efficiency and effectiveness.
- 3.3.5 It is recognised that the obligation under this Agreement regarding cooperation and consultation in the development and implementation of change initiatives will place obligations, duties and responsibilities on principals, managers, union officials, delegates or their equivalent.
- 3.3.6 Membership of LCCs shall comprise equal representation of management and union nominees. The size of the committees is not prescribed but will usually be 8, that is 4 union and 4 management representatives providing that 2 union representatives be Queensland Teachers' Union members. Decisions of the LCC are to be made by consensus wherever possible.
- 3.3.7 The parties acknowledge that the processes of educational, professional, administrative and organisational change and workplace reform are broader than the specific matters detailed in this Agreement.
- 3.3.8 The parties agree that changes occurring outside of the terms of this Agreement shall be facilitated in a manner that involves timely consultation and discussion of all relevant issues.

3.4 Function of Union Workplace Delegates

- 3.4.1 Education Queensland acknowledges the constructive role democratically elected union delegates undertake in the workplace in relation to union activities that support and assist members. That role will be formally recognised, accepted and supported.
- 3.4.2 Education Queensland employees will be given full access to union delegates/officials during working hours to discuss any employment matter or seek union advice provided that work requirements are not unduly affected.
- 3.4.3 Provided that service delivery is not disrupted and work requirements are not unduly affected, delegates will be provided convenient access to means of communication and facilities for the purpose of undertaking union activities. Such facilities include: telephones, computers, e-mail, photocopiers, facsimile machines, storage facilities, meeting rooms, and notice boards and staff notices. It is expected that management and delegates will take a reasonable approach to the responsible use of such facilities for information and communication purposes.
- 3.4.4 Access to facilities will be provided at no cost for activities such as involvement in workplace negotiations and participation in joint ventures. Access to such facilities for other union business shall be at cost except that under no circumstances will access be available for the furtherance of industrial action.
- 3.4.5 As a general principle, the conduct of union meetings and other union activities should occur outside of regular work requirements. However union representatives may be granted time off from work to attend to their duties by mutual arrangement with their supervisor following consideration of their usual work responsibilities.
- 3.4.6 Union representatives shall be granted leave to attend relevant trade union meetings, seminars and other forums based upon departmental convenience and existing guidelines for such leave.
- 3.4.7 Union representatives shall be granted timely access to administration personnel responsible for decisions affecting union members.

3.5 Facilitative provisions

- 3.5.1 A facilitative provision is necessary to allow for the variation of employment conditions or work practices contained within awards, industrial agreements, Public Sector Management Standards, Directives issued under the *Public Service Act 1996* or the Determinations of Governor-in-Council at the school or workplace in order to meet the objectives of this Agreement. The following procedures shall apply:
- (a) employees may be represented by their local union delegate(s) and shall have the right to be represented by their union official(s);
 - (b) the implementation of changed employment conditions or work practices shall be negotiated between the principal/supervisors and all employees who would be directly affected in line with consultative mechanisms;
 - (c) conditions of employment or work practices provided for in facilitative provisions can only be implemented by agreement;
 - (d) agreement is defined as obtaining the agreement of the majority of employees affected, however, it is acknowledged by the parties that the consensus should wherever possible be the basis of agreement.
 - (e) all employees directly affected must be consulted as a group and the relevant union(s) notified at least 7 days in advance regarding any proposal;
 - (f) in the process of determining to vary work practices or employment conditions, appropriate consideration must be given to the potential impact upon employees with family responsibilities, occupational health and safety issues and on other employee groups;

- (g) in determining the outcome neither party should unreasonably withhold agreement;
- (h) any proposal to vary award conditions, or provisions within the Public Sector Management Standards, Directives of the Office of the Public Service or the Determinations of Governor-in-Council shall be subject to ratification by the single bargaining unit prior to implementation;
- (i) any such agreement reached must be documented, and must incorporate a review period. A copy of such agreement must be forwarded to the relevant union(s) and the ECC;
- (j) basic employment conditions, such as the normal weekly pay of employees, hours of duty, recreation leave, sick leave, long service leave and other leave entitlements, cannot be varied by this process.

3.6 Job Security

The parties recognise that enterprise bargaining offers valuable opportunities for both the Queensland government and its employees to enhance the quality, cost effectiveness, range and scale of services and to improve salaries and working conditions.

The Queensland government is committed to ensuring job security for its employees. The government recognises that achieving best practice enhances job security. This commitment to job security for employees will be assisted where managers and the workforce are more flexible in terms of work location, mobility, work practices and skills acquisition to meet changing needs.

To this end, arbitrary job reductions shall not be pursued for the life of this Agreement. However, the parties acknowledge that changes to work practices and productivity initiative may necessitate organisation change. Where organisation changes affect job viability, redeployment and retraining will remain the government's priority. It is further agreed, that entitlements of the Public Sector Management Standard for staffing Options to Manage Organisation Change in the Queensland Public Sector at 31 December 1996 (and reflected in the Directives issued under the *Public Service Act 1996*) will continue to be applied for the life of the agreement.

Where an agency has made a definite decision to introduce major changes that are likely to have significant effect on employees' job viability, the agency shall notify and fully consult with the employees who may be affected by the proposed changes and their union representative.

3.7 Dispute Settlement Procedures

3.7.1 The objectives of this procedure are:

- (a) the avoidance and resolution of any dispute over matters covered by this Agreement, by measures based on the provision of information and explanation, consultation, cooperation and negotiation;
- (b) a reduction in the level of disputation; and
- (c) the promotion of efficiency, effectiveness and equity in the workplace.

3.7.2 Subject to legislation, while the dispute procedure is being followed, normal work is to continue except in the case of a genuine safety issue. The *status quo* existing before the emergence of a dispute is to continue whilst the procedure is being followed. No party shall be prejudiced as to the final settlement by the continuation of work.

3.7.3 There is a requirement for management including the principal or the person in charge of the centre to provide relevant information and explanation and consult with the appropriate union representatives.

3.7.4 In the event of any disagreement between the parties as to the interpretation or implementation of this Agreement, the following procedures shall apply;

- (a) in the first instance, the matter is to be discussed by the employee(s) concerned (where appropriate) and the principal/person in charge of the centre. The discussion should take place within 24 hours and the procedure should not extend beyond 7 days;
- (b) if the matter is not resolved as per (a) above, it shall be referred to the District Director or nominee and to the relevant union officer/delegate/representative who shall arrange a conference of the parties to discuss the matter. This process should not extend beyond 7 days;
- (c) if the matter remains unresolved it shall be referred to the Director-General of Education or nominee and the secretary of the union or nominee for discussion and appropriate action. This process should not exceed 14 days;
- (d) if the matter is not resolved then it may be referred by either party to the Queensland Industrial Relations Commission.

3.7.5 In terms of s. 230 of the *Industrial Relations Act 1999*, the Commission is empowered by this Agreement to settle and determine any matters in dispute.

3.7.6 Nothing contained in this procedure shall prevent representatives of the department or the unions from intervening either at the request of a member or through his/her own initiative in respect of matters in dispute, should such action be considered conducive to achieving resolution.

PART 4 – MATTERS FOR ARBITRATION

4.1 The parties agree that the following issues will be submitted to the Queensland Industrial Relations Commission in respect of teachers for arbitration:

- (a) quantum and timing of general wage increases;
- (b) 5% additional increase in the commencement salary for four-year trained teachers;
- (c) enhanced salary classification for teachers who commence employment after the completion of a two-year post graduate pre-service qualification; and

(d) exclusion of school vacations from calculations for periods of paid maternity leave.

- 4.2 The parties agree that, should approval from Government not be forthcoming for the issues associated with paid maternity leave where a pregnancy terminates in other than the birth of a living child to be included as an agreed matter, this matter will be submitted for arbitration arising from Part 4.1 (d).

PART 5 – WORKPLACE REFORM INITIATIVES

5.1 Teaching and Learning

5.1.1 Teaching and Learning

- (a) The parties consider that the most critical objective for the state education system is improved educational outcomes for students. This requires a focus on the improvement of the teaching and learning process through the attainment of Best Practices.
- (b) Teaching and learning priorities for the life of this Agreement include:
- (i) improved student learning outcomes, especially in literacy and numeracy and particularly with regard to outcomes for target groups, especially Aboriginal and Torres Strait Islander students;
 - (ii) improved behaviour management practices in schools.
- (c) The parties agree to the provision of information on student outcomes to the school community and the Director-General as part of the school planning and accountability framework. The annual report as included in the school planning and accountability framework reports on student performance outcomes. Schools will provide communities with information on broad school outcomes over time as compared to statewide benchmarks. These outcomes will not be reported as:
- (i) individual student results (except to the student's parents);
 - (ii) individual class results;
 - (iii) comparison with neighboring schools (except at global level i.e. anonymous comparison of like schools).
- (d) The parties recognise the QSCC timetable for the development and implementation of new syllabuses. The planned implementation of each new syllabus will occur over a period of no less than 3 years. The planned implementation will take into account the impact on schools, particularly primary schools where classroom teachers have to implement more than one syllabus. The implementation of the two new syllabuses will be staggered in primary schools.
- The system is committed to providing support for the implementation of new syllabuses and minimising any additional workload for teachers.
- (e) The parties agree to the implementation of curriculum in the senior secondary school to allow students to be able to undertake vocational subjects within at least the 2 broad industry areas identified prior to this Agreement.
- (f) The parties support the enhanced use of information technology in teaching and learning including connection to the internet, an enhanced range of software and hardware and upskilling of teachers and other staff.
- (g) The parties agree to the development of case studies of identified best practice, based on the data gathered through school reviews of effective learning and teaching.

5.1.2 Best Practice

The parties reaffirm their commitment to best practice during the life of the Agreement as stated in the *Department of Education Operational Areas Certified Agreement 1994* and the *Department of Education Queensland Certified Agreement 1997*.

5.2 School Based Management

5.2.1 School based management

- (a) The parties acknowledge progress made to date with implementing a progressive approach to school based management through pilot projects implemented under the *Department of Education Operational Areas Certified Agreement 1994* and the *Department of Education Queensland Certified Agreement 1997*.
- (b) The parties agree to cooperate in the implementation of this initiative. This cooperation will involve participation in refining the model of school based management.
- (c) As such, the parties are committed to the following implementation parameters:

(i) Maximisation Of Permanent Employment

In accordance with previous policy positions, Education Queensland reaffirms its commitment to the maximisation of permanent employment and the maintenance of job security for permanent employees. As such, temporary teacher numbers as a proportion of teacher establishment numbers will be carefully monitored with a view to identifying any significant data that would exceed current levels of temporary employment.

Whilst Education Queensland will commit to restrict temporary or casual employment to *bona fide* short term engagements (12 months or less) the unions recognise the need to maintain the use of temporary or casual employment in respect of vacancies for transfers or *bona fide* short term projects. As such the parties recognise the use of temporary and casual employment as legitimate organisational options.

Where an individual case or a trend has been monitored of an alleged inappropriate temporary or casual engagement, the issue shall be raised in the first instance with the principal and if still unresolved with the district office and then central office, if required. If still unresolved, the issue may be referred to the Industrial Relations Commission or the Office of the Public Service as appropriate.

(ii) Budget

Notional salary allocation will be made centrally.

Funds allocated in the total school budget for staffing must be used for the employment of staff in accordance with the centrally determined allocative methodology.

- Provided that any variation will be subject to other guarantees being met and the educational provision to students in the eight key learning areas.
- Provided further that variations will only occur in accordance with the procedures in subclause 5.2.1 (c)(iv) (staffing).

Decisions will be subject to the grievance procedures contained within this Agreement.

The annual total school budget will not be used to fund any salary increases payable under this Agreement.

In terms of budget allocation, Education Queensland reiterates its commitment to the provision of additional resourcing for the implementation of school based management initiatives. These additional funds are to be distributed equitably amongst all schools.

There will be no further devolution of salary funds to schools such as "bulk funding" during the life of this Agreement.

(iii) Resourcing

The unions will be invited to participate in the department's review of statewide resource allocation (including staffing) methodologies. The parties recognise resourcing pressures in the primary sector as an issue and note the establishment of a working party to investigate and report.

The parties are committed to detailed consideration in the review of statewide allocative methodologies, particularly as they relate to:

- student disability;
- student learning difficulties;
- student behavioural problems;
- safety requirements e.g. in vocational courses;
- multi-age classes;
- vocational education.

(iv) Staffing

With the exception of any outcomes associated with the review of statewide resource allocation methodologies, the current staff allocation methodology will be maintained.

The full-time equivalent teacher numbers shall be maintained statewide during the Agreement at no less than the numbers provided by the 1997 Allocative Methodology.

Notwithstanding this commitment, the parties acknowledge that flexibility will be required at the school level. So as to attain this flexibility, the unions acknowledge that Education Queensland will require the ability to modify or alter local staffing arrangements in accordance with local needs.

The parties acknowledge that flexible staffing arrangements will be determined at a local school level and will occur in accordance with the following parameters:

- funds allocated to staff must be used for the employment of staff;
- changes to staffing mix shall only occur in the event of a substantive vacancy;
- any variation to the staffing mix will be subject to all other guarantees being met;
- variations to the staffing mix will only occur following endorsement by the LCC (where an LCC is required) and a majority of staff. Variations must be endorsed by the school council (if established) and the District Director and submitted to the ECC for approval;
- the parties agree to establish a framework to streamline the ECC approval process;
- the pay and conditions of all employees shall be in accordance with appropriate awards and agreements. Any new positions shall be subject to job evaluation in accordance with the relevant award or directive.

(v) Specialist Services

Education Queensland is committed to the provision of specialist services to assist in the delivery of curriculum based on the eight key learning areas. Further, Education Queensland will endeavour to provide opportunities to increase the specialist pool. Those specialist areas include:

- instrumental music;
- guidance;
- advisory visiting teachers;
- teacher-librarians;

- LOTE;
- music;
- learning support; and
- health and physical education.

These services will continue to be provided by teachers with specialist training and/or qualifications to at least the extent to which this currently occurs.

The principals in consultation with the District Director will determine the provision of support services in accordance with provisions of this Agreement relating to job security and flexible staffing.

(vi) School Councils

Staff shall be represented by elected representatives on school councils in numbers or proportions as determined by the formal consultation process.

The role of the school council will focus on the broad strategic direction of the school with day to day management remaining the responsibility of the principal.

The school council shall have no role in the appointment, transfer, termination, salary or conditions of employees other than the participation of the school council representative as part of the department's selection panel for the principal of the school.

(vii) Transfer

The transfer system will continue to ensure staffing of remote area and difficult-to-staff schools and to transfer teachers as per the current Teacher Transfer Policy and Guidelines. The same processes and requirements for transfer shall apply under school based management.

Education Queensland is committed to the continued operation of the current Teacher Transfer Policy and Guidelines and teachers shall continue to enjoy transfer rights no less favourable than those contained in the policy.

The transfer cycle will continue to occur prior to the new appointments' cycle.

Education Queensland is committed to the placement of teachers who have accrued sufficient transfer points through the transfer system or who have been identified for transfer on compassionate grounds. Requested transfers will be dealt with in the same manner as they are dealt with now.

Education Queensland is committed to the continuation of current transfer rights for teachers subject to required transfers, e.g. transfers caused by falling enrolments.

Transfers shall still be subject to the existence of a suitable vacancy in the area.

Education Queensland is further committed to the continuation of the existing transfer policy for non-teaching staff in schools.

(viii) Class Sizes

Schools will be funded for staffing in accordance with a student/teacher ratio based on established class size targets. The parties acknowledge the fundamental importance of class size contributing to the learning outcomes of students and the health and welfare of teachers.

Accordingly the department is committed to the following maximum class size targets:

Preschool, years 1-3, years 11-12.....	25 per teacher
Years 4-10.....	30 per teacher

Classes in excess of these maximum target sizes should only occur in exceptional circumstances. Where there is the possibility of class sizes in excess of these targets, the class arrangements shall be the subject of a timely collaborative and consultative process with staff in accordance with the consultative principles contained in this Agreement.

(ix) Local Consultative Committees

The composition of each LCC should broadly reflect the composition of the work groups in the schools.

The parties reaffirm their commitment to timely consultation on any matters affecting employment or conditions of employment.

(x) Processes

Education Queensland is committed to the ongoing monitoring and evaluation of school based management. The unions will be provided with an opportunity to be involved in this ongoing process, both at the local level (through LCC) and the systemic level.

(xi) Monitoring Procedures

In order that the guarantees in this document can be properly monitored Education Queensland will provide to the relevant unions the following information:

- permanent and temporary teacher numbers and the number of teachers on leave, including details of type of leave, at the same three agreed times each year;
- the allocative methodology used as the basis for staffing schools, including allocation of specialist teachers and services;

- class size data.

Where available, a breakdown of information by district and sector will also be provided.

(xii) Special Schools

Special schools continue to participate in school based management.

(xiii) Operation of School Based Management

School based management will occur within a systemic framework as determined by government legislation and departmental policy.

(xiv) Implementation of School Based Management

Implementation is subject to the operation of necessary technology to support school based management.

(xv) School Leadership

The day to day leadership and management of the school will remain the responsibility of the principal. School councils will be involved in the broad strategic direction setting of the school and approval of particular policies and processes (e.g. budget, annual operational plan, annual report etc.).

PART 6 – BUS AND PLAYGROUND DUTY

- 6.1 The parties acknowledge the November 1989 agreement between the parties to minimise the use of teachers for playground duty and bus supervision duties.
- 6.2 The parties will develop resources to assist schools in the effective rostering of meal breaks and playground duty in consultation with the QTU to ensure that in 2001 the requirements of the Award for a continuous three-quarter of an hour each day to be allowed to each teacher for a meal between the hours of 12 noon and 2 p.m. or such other times as may be arranged by the Principal in consultation with employees are provided except where rostering arrangements have been entered into in accordance with workplace reform initiatives as provided for in the Department of Education Queensland Certified Agreement 1997 clause 1.4 or in accordance with the Teachers' Award – State clause 26C – Amendments to the Standard Hours of Instruction.
- 6.3 The roster in each school shall be developed in consultation with the staff and the Local Consultative Committee. Any disputes concerning the roster or its development shall be subject to the dispute resolution procedure in this Agreement.
- 6.4 When developed, the roster shall be displayed on a notice board or another location readily accessed by all staff. Arrangements are to be developed for flexibility to the rosters should staff be absent for 'rostered duty'.
- 6.5 The parties agree to monitor the rostering arrangements through the ECC and to review these arrangements at the end of 2001.
- 6.6 Any claims for additional resources to support the implementation shall be exempt from the no further claims commitment of this Agreement and may be arbitrated by Queensland Industrial Relations Commission, if necessary.

PART 7 – PROMOTIONAL POSITIONS

7.1 Review of Evaluation of Promotional Positions

- 7.1.1 The parties agree to undertake a joint review of the classification structure for promotional positions during the life of the agreement.

The review will include matters such as:

- (a) the job evaluation system used to classify positions;
- (b) the appropriateness of a banded structure;
- (c) the reduction in the number of pay points;
- (d) whether or not the promotional salary structure provides appropriate incentives for promotion.

The review will consider other matters raised by either party relating to the classification structure.

The parties agree that recommendations from the review may be implemented by agreement during the period of this Agreement and will be considered in negotiations for any replacement agreement.

- 7.1.2 Notwithstanding the above, the parties agree to undertake a review using the current job evaluation system to reassess the relative evaluations of teaching principal and associate administrator positions in Queensland schools.

Any changes to evaluations of classes of positions arising from the review shall be processed in accordance with the provision of the Award and this Agreement.

7.2 Determination of Commencement Salary of Promotional Position

- 7.2.1 Employees appointed to promotional positions in Bands 8 to 11 inclusive shall commence on the salary step determined as if the Teachers' Award – State alone applied.
- 7.2.2 Employees appointed to promotional positions in Bands 8 to 11 from 1 July 1998 to 1 July 2000 shall be entitled, on application, to an adjustment in his/her salary step applying from 1 July 2000 as if subclause 7.2.1 above applied at the time of his/her promotion.

7.3 Access to Permanent Part-time Arrangements

The parties agree that during the life of this Agreement, arrangements to facilitate access to permanent part-time status for classified officers will be formalised.

7.4 New Titles for Promotional Positions

The parties recognise the following designations of school based promotional positions.

Head of Special Education Services
Head of School
Associate Principal

PART 8 – UNION ENCOURAGEMENT PROVISIONS

- 8.1 The Department of Education recognises the right of individuals to join a union and will encourage employees to join the relevant union which is a party to this Agreement.
- 8.2 An application for union membership and information on the relevant union/s will be provided to all employees at the point of engagement.
- 8.3 Information on the relevant union/s will be included in induction materials. The relevant union workplace representatives shall be allocated sufficient time during any official induction program to discuss the benefits of union membership.
- 8.4 Union representatives will be provided with the opportunity to discuss union membership and union issues with all new employees.

PART 9 – RELEASE FROM NORMAL DUTIES FOR WORKPLACE HEALTH AND SAFETY REPRESENTATIVES/OFFICERS AND SEXUAL HARASSMENT REFERRAL OFFICERS

9.1 Workplace Health and Safety Representatives and Officers

Education Queensland recognises the role of workplace health and safety representatives and officers:

Provided that work requirements are not unduly affected, workplace health and safety representatives/officers will be provided with adequate time and access to facilities to enable them to carry out their functions. It is expected that Principals and workplace health and safety representatives/officers will take a reasonable approach to the responsible use of facilities for information and communication purposes.

The *Workplace Health and Safety Act 1995*, s. 81(3) states that an employer must allow a Workplace Health and Safety Representative to carry out tasks associated with the position during ordinary working hours. Under s. 96(b), the Workplace Health and Safety Officer can conduct inspections at the workplace to identify any unsafe conditions or practices, and under s. 88(4) the committee must meet when asked to by the Workplace Health and Safety Officer, however s. 88(3) requires that the Workplace Health and Safety Committee meet at least once every three months during ordinary working hours.

9.2 Sexual Harassment Referral Officers

Education Queensland recognises the role of sexual harassment referral officers:

Provided that work requirements are not unduly affected, sexual harassment referral officers will be provided with adequate time and access to facilities to enable them to carry out their functions. It is expected that Principals and sexual harassment referral officers will take a reasonable approach to the responsible use of facilities for information and communication purposes.

Sexual Harassment is an offence and is prohibited under Chapter 3 Part 1 of the *Queensland Anti-discrimination Act 1991*, clause 117 (1) which states that the purpose of the Act is to promote equality of opportunity for everyone by protecting them from sexual harassment. Sexual harassment breaches also occur under Section 2 of the Code of Conduct "Respect for Persons", Section 7(b) of the *Public Service Management and Employment Act 1988*, which requires that employees be treated fairly, and Section 7 of the *Workplace Health and Safety Act 1995*, which requires that a safe and health work environment be provided for employees.

PART 10 – SALARY PACKAGING

- 10.1 Salary packaging is available for all employees covered by this Agreement.
- 10.2 Education Queensland will apply the following principles for employees that avail themselves of salary packaging:
 - (a) As part of the salary package arrangements, the cost for administering the package, including fringe benefits tax, are met by the participating employee;
 - (b) There will be no additional increase in superannuation costs or to fringe benefits payments made by the employer;
 - (c) Increases or amendments in taxation are to be passed on to employees as part of their salary package;
 - (d) Employees must provided to the employer evidence of independent financial advice prior to taking up a salary package;
 - (e) There will be no significant administrative workload or other ongoing cost to the employer; and
 - (f) Any additional administrative and fringe benefits tax costs are to be met by the employee.
- 10.3 The employee's salary for superannuation purposes and termination payments will be the gross salary which the employee would receive if not taking part in salary packaging.

PART 11 – SERVICES TO REMOTE AREA SCHOOLS

The parties acknowledge that during the life of this Agreement measures will be implemented under the "Partners for Success" program to enhance the educational services and outcomes of students in communities which have high populations of Aboriginal and Torres Strait Islander students.

PART 12 – INDUSTRIAL RELATIONS EDUCATION LEAVE

- (1) Industrial relations education leave is paid time off, to acquire knowledge and competencies in industrial relations. Such knowledge and competencies can allow employees to effectively participate in consultative structures, perform a representative role and further the effective operation of grievance and dispute settlement procedures.
- (2) Employees may be granted up to 5 working days (or the equivalent hours) paid time off (non-accumulative) per calendar year to attend industrial relations sessions, approved by the Director-General or their delegate.

Additional leave, over and above the 5 working days non-accumulative (or the equivalent hours) in any one calendar year may be granted, where approved structured employees' training courses involve more than 5 working days (or the equivalent hours). Such leave will be subject to consultation between the Director-General (or their delegate) and the relevant union and employee.

- (3) Upon request and subject to approval by the Director-General (or their delegate), employees may be granted paid time off in special circumstances to attend management committee meetings, union conferences and ACTU Congress.
- (4) The granting of industrial relations education leave and any additional leave should not impact adversely on service delivery, work requirements and the effectiveness and efficiency of the Department. At the same time leave shall not be unreasonably refused.
- (5) At the discretion of the Director-General, employees may be granted special leave without pay to undertake work with their union. Such leave will be in accordance with the Ministerial Directive on Special Leave 14/99 in relation to special leave without salary. Conditions outlined in the Special Leave Directive that provide for the employees' return to work following unpaid leave will be met.

PART 13 – ILO CONVENTIONS

The Queensland Government as an employer recognises its obligations to give effect to international labour standards including freedom of association, workers' representatives, collective bargaining and equality of opportunity for all public sector workers.

ATTACHMENT 1

Award Coverage

This Agreement shall apply to employees of the Department of Education covered by the following awards/industrial agreements:

- Teachers' Award – State
- Teachers (Enterprise Bargaining) Award – State
- Community Teachers, Assistant Teachers – Aboriginal and Torres Strait Islander Community Schools Award – State;
- Permanent Part-Time Teaching in State Schools Industrial Agreement;
- Specialist teachers in State Primary and Special Schools Industrial Agreement;
- Practice Teaching in State Schools Industrial Agreement.

Dated this seventh day of September, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 7 September 2000
Interim Order – Department of Education Teachers' Agreement 2000
Released: 3 October 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 679 – confidential material tendered in evidence

**Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders
and Shopkeepers Association (Industrial Organization of Employers) and Others (Nos. B579 and B1301 of 2000)**

VICE PRESIDENT LINNANE
COMMISSIONERS EDWARDS AND SWAN

29 September 2000

SUPPRESSION ORDER

THIS Commission, after hearing the parties to the above matters in Brisbane on 27 September, 2000, doth hereby Order pursuant to s. 679 of the *Industrial Relations Act 1999*, that the following parts of transcript dated 27 September, 2000 be withheld from release or search absolutely until further order of the Commission:–

- 1. At page 136, the numerical figures in lines 13, 15 and 22;
- 2. At page 152, the last three words in line 17;
- 3. At page 168, the numerical figures in lines 6, 8, 14 and 37.
- 4. That this Order shall take effect from 28 September, 2000.

Dated this twenty-ninth day of September, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 29 September 2000
Order – Suppression
Released: 29 September 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – order for unpaid wages

**Victor Henry Borghero of the Department of Employment, Training and Industrial Relations AND
Brisbane Bobcat & Excavation Hire Pty Ltd (W107 of 2000)**

COMMISSIONER EDWARDS

2 October 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 24 August and 2 October 2000, this Commission, after having decided that Leslie Arthur Pearson was underpaid wages by Brisbane Bobcat & Excavation Hire Pty Ltd, in accordance with the provisions of the Transport, Distribution and Courier Industry Award – Southern Division, doth order as follows:–

1. That Brisbane Bobcat & Excavation Hire Pty Ltd pay to Leslie Arthur Pearson the amount of two hundred and twenty–nine dollars and fifty cents (\$229.50) in respect of underpaid wages for the period between 22 January and 16 March 1999.
2. That the amount set out in paragraph 1 of this Order is to be paid within twenty–two (22) days of the date of this Order.

Dated this second day of October, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 2 October 2000
Order – Unpaid wages
Released: 4 October 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 147 – application for amendment

**Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and
Administrative Branch, Union of Employees AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B847 of 2000)**

CLERICAL EMPLOYEES AWARD – STATE

COMMISSIONER BROWN

4 September 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 1 and 18 August and 4 September 2000, this Commission doth order that the said Award be amended as follows as from the eighteenth day of September, 2000:–

1. By renumbering subclause (1) of clause 3.1 “Definitions” as provision (a) of subclause (1) and inserting a new provision (b) as follows:–

“(b) Notwithstanding (a) above, the term “Clerk” shall include any person engaged exclusively or principally in any or all of the following:–

- (i) the facilitation of the sale of goods and/or services by the receipt, recording and/or processing of information via the telephone or other apparatus;
- (ii) the routine collection of information via the telephone or other apparatus for the purposes of surveys, opinions polls, etc.;
- (iii) the promotion and recording of lottery ticket sales or other goods or services via the telephone or other apparatus;
- (iv) the seeking and recording of donations to any organisations or association via the telephone or other apparatus;

Provided that clause 3.1(1)(b) does not apply to those employees subject to the Retail Industry (Interim) Award – State clause 1.2(2) as at the date of this amendment:

Provided further that the following charitable organisations shall be exempt from clause 3.1(1)(b) until 18 September 2001:–

- Autism Association of Queensland
- Cerebral Palsy League of Queensland
- Endeavour Foundation
- Surf Life Saving Queensland
- Queensland Muscular Dystrophy Association Inc
- Intellectually Handicapped Persons Association
- Drug Arm

- Boystown Lotteries
- Guide dogs for the Blind Association of Queensland

2. In subclause (2) (Classification Levels) of clause 3.2 "Classification Definitions" –

- (a) by adding in Level 1 "Typical Duties/Skills", after the words "Telephonists involved in the manipulation of communication apparatus, including computerised keyboard/switchboard", the words "/call centre"; and
- (b) by adding in Level 2 "Typical Duties/Skills," before the words "Responding to enquiries, where presentation and the use of interpersonal skills together with the acquisition of sound knowledge of the organisations operations and services are a key aspect of the position" the words "Reception/switchboard/call centre duties as in Level 1 and in addition."

Dated this fourth day of September, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 18 September 2000
Amendment – Call Centres
Released: 3 October 2000