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No. 8

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999*  
*Industrial Court Rules 1997*

NOTICE

The following Agreements have been certified by the Commission:-

No/s	Title	Date certified	Cancelling
CA271/00	South Bank Corporation Employees' - Certified Agreement 1999	26/6/00	CA551/96
CA446/00	CAP Security Services Pty Ltd - Certified Agreement	31/8/00	
CA507/00	Stuart Cole t/a Ezi-Fix Reinforcing Specialists - Certified Agreement	26/9/00	
CA508/00	Segment Pty Ltd t/a Rig-Rite Erections - Certified Agreement	26/9/00	CA235/97
CA509/00	Acala Pty Ltd t/a Kwik-cut Concrete Drilling & Sawing - Certified Agreement	26/9/00	
CA510/00	Adnought Sheet Metal Fabrications Pty Ltd - Certified Agreement	26/9/00	
CA511/00	Timothy G Collard t/a Mitchell's Concretors - Certified Agreement	26/9/00	CA317/98
CA512/00	Meales Concrete Pumping & Placing (Noosa) Pty Ltd - Certified Agreement	26/9/00	
CA482/00	Council of the Shire of Kolan Enterprise Bargaining – Certified Agreement 1999	2/10/00	CA405/97
CA483/00	Ergon Energy Corporation Limited Transformer Services and HV Test Business Continuity of Service - Certified Agreement 2000	2/10/00	
CA486/00	Moreton Tug & Barge Co Pty Ltd Marine - Certified Agreement 2000	2/10/00	CA75/96
CA491/00	CCI - Certified Agreement 2000	2/10/00	CA330/97
CA492/00	Bundaberg Sugar Ltd Mourilyan Sugar Mill Enterprise Bargaining – Certified Agreement 2000	2/10/00	CA272/98
CA516/00	Woocoo Shire Council Enterprise Bargaining State Award Employees – Certified Agreement 2000	2/10/00	CA35/99
CA517/00	Council of the Shire of Esk State Award Employee Enterprise Bargaining – Certified Agreement 2000	2/10/00	CA158/98
CA502/00	Yaralla Sports Club Inc. - Certified Agreement	3/10/00	

No/s	Title	Date certified	Cancelling
CA526/00	QMI Employees Enterprise - Certified Agreement 2000	4/10/00	
CA532/00	QCOS Services Enterprise - Certified Agreement	4/10/00	CA111/98
CA533/00	Kerry Shaw t/a Kerry's Concrete Pumping - Certified Agreement	4/10/00	
CA534/00	Amethyst Green Pty Ltd t/a Shrubscapes - Certified Agreement	4/10/00	
CA535/00	Eveready Concrete Contractors Pty Ltd - Certified Agreement	4/10/00	CA202/97

E. EWALD  
Industrial Registrar

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 125 – application for amendment

**Allamanda Private Hospital and 16 other named hospitals AND  
Queensland Nurses' Union of Employees and Others (No. B424 of 2000)**

**PRIVATE HOSPITAL NURSES' AWARD – STATE**

VICE PRESIDENT LINNANE  
COMMISSIONERS BLOOMFIELD AND SWAN

11 October 2000

Amendment – Wages – Reference to s. 129 – “Flow-on of certified agreements” – Inclusion of wage rates contained within certified agreements – Procedural amendments – Updated list of respondents to the Award – Current grading of registered nurse levels at various private hospitals – Deleting obsolete or out of date provisions – Arbitrated Matter – Amended application granted by consent.

DECISION

Application number B424 of 2000 is an application filed by Mr J.C. Patti of Employer Services Pty Ltd for and on behalf of a number of employers who are bound to observe the terms of the Private Hospital Nurses' Award – State. The application was amended on 28 July 2000 and again on 17 August 2000. The Commission was asked to amend the Award by consent of the parties, operative 28 July 2000, to reflect the 17 August 2000 amendment.

The amended application asked the Commission to act pursuant to s. 129 of the *Industrial Relations Act 1999* to include in the Award certain wage rates which were negotiated between employers in the industry and the Queensland Nurses' Union of Employees (QNU) and which reflected the first round of enterprise bargaining outcomes negotiated in the industry as early as 1996. We were told that employers in the industry and the QNU are now in the third round of enterprise bargaining negotiations.

The remaining parts of the amended application were said to be procedural amendments or amendments to bring the Award up to date by showing an updated list of respondents to the Award, the current grading of registered nurse levels at various private hospitals and by deleting obsolete or out of date provisions.

Section 129 of the *Industrial Relations Act 1999* is in the following terms:–

**“Flow-on of certified agreements**

129. The Commission may include in an award provisions that are based on a certified agreement only if satisfied the provisions –

- (a) are consistent with principles established by the full bench that apply for deciding wages and employment conditions; and
- (b) are not contrary to the public interest.”.

The meaning of s. 129, within the context of the Act overall, was considered by a Full Bench of the Commission in the State Wage Case of 19 November 1999 (162 QGIG 356 at 362). In its decision the Full Bench said:–

**“PRINCIPLE 10 – Award Amendment to Give Effect to a Certified Agreement**

The parties have approached this matter on the assumption that s. 129 of the *Industrial Relations Act 1999* is the head of power. We find ourselves unable to accept that approach. Having regard to the way in which it is expressed, we rather consider that s. 129 assumes that in discharge of the duty imposed upon it by s. 126 or in exercising the power at s. 125(1) against the back of the objects at s. 3, the said Commission may in a particular case decide to include in an award, provisions based on (which does not mean ‘the same as’), the provisions of a certified agreement. Section 129 then fetters the Commission’s power to give effect to such a view recommended by permitting inclusion of the provision only if the Commissioner is satisfied that the provisions to be included are – (a) consistent with the principles established by the Full Bench that apply for deciding wages and employment conditions and (b) are not contrary to the public interest. It follows that we reject the limitations which were contended for by the employer organisations. To voluntarily give up all power to insert such a provision save in ‘special circumstances’ and where the provision would act as a ‘disincentive to enterprise bargaining’, to take but two examples, would unduly fetter the power at s. 125(1) and may well prove inconsistent with the discharge of the obligation imposed on the Commission by s. 126.

...

One final comment we should make is about the principal contended for by the employer organisations. It is formulated very much in terms of onus of proof. For example, s. 129(b) is replaced by an obligation upon the applicant to establish that the variation would not be contrary to the public interest. We are of the view adopted by the Australian Industrial Relations Commission in *Cole and Allied Operations Pty Ltd v. Automotive, Food, Metals, Engineering Printing and Kindred Union and Others* 73 IR 311 at 317, that the notion of onus of proof is unhelpful when applied to a

statutory requirement that the Commission be 'satisfied'. Save to the extent that a person commencing an application has the carriage of proceedings and carries the risk of failure may be said to have an onus to satisfy the Commission, we propose to impose no onus at all.

...

It is prudent to require that, where adoption of wage rates based on certified agreements would distort relativities, the wage rates and the relativities should be separately expressed in order that the relativities of the various classification levels will continue to form part of the store of industrial knowledge.

On the basis of past unhappy experience we consider that those seeking to base award wage rates on rates in a certified agreement or agreements should be required to make submissions about how the absorption of future state wage increases is to be dealt with. We do not go so far as to suggest a standard form clause. The absorption clause inserted into the Award at the same time as the certified agreement based wage increase will inevitably have to be framed to like the particular circumstances. However, the drafting of the clause should not be deferred because of uncertainty as to the basis upon which future state wage increases will be set. . . . It should be left to the Full Bench hearing the next state wage case to review such clauses as best it can if a different approach to wage fixing ultimately finds favour. We propose to reword Principle 10 as follows –

'Subject to s. 129 the Commission may include in an award, provisions that are based on a certified agreement whether or not there be consent by all parties to be bound. Without limiting the matters to be taken into account by the Commission, the Commission should consider whether inclusion of the provision will act as a disincentive to enterprise bargaining. If the effect of grant of the application will be to increase wages payable under the Award, the Commission is to insist on submissions about how future state wage increases are (if at all) to be absorbed into the increase. Where all such increases distort relativities, the Commission must ensure that the relativities and the wage increases are separately expressed.'".

The principle was further discussed in the State Wage Decision of 8 August 2000 (164 QGIG 372). In that decision the Full Bench said (at 373):–

"There has been some argument about clause 10 of the existing Principles which guide the commission constituted by a commissioner sitting alone. It is contended by the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers that the use of the adjective 'future' in the second last sentence could require a commissioner sitting alone to permit double dipping, where the \$15 increase to which this decision relates flows into the award before the s. 129 order is made. The solution proposed is to amend the clause which clause 9(5)(e) requires to be inserted in awards of the commission to give effect to this decision. The applicants oppose the proposed amendment on the ground that it may produce unforeseen consequences. We accept that argument. However, lest clause 10 impose an unintended limitation on a single commissioner we propose to place an asterisk after the adjective 'future' and insert in square brackets at the end of the clause [The Commission is not restricted to hearing submissions about future state wage increases]. Read with these reasons, which on the more recent authorities are amongst the extrinsic materials to which reference may be made in construing the guidelines, that addition should prove an adequate safeguard."

Mr S. Ross, who represented QNU, indicated that the Union generally consented to the amended application of 17 August but did not see the need to record historical wage relativities in the wages clause because adoption of the rates proposed would not distort wage rates in the Award nor relativities. This was because the wage rates reflected percentage increases which had been negotiated at enterprise level.

Mr Ross also supported Mr Patti's submission that the General Ruling of the Commission of 8 August 2000 be flowed into the Award from 1 September 2000 and said that such rates would apply in addition to the rates set out in the amended application. He also said that it had been agreed that future State Wage increases would apply on top of the new award rates.

Mr Ross also tabled an exhibit which recorded the enterprise bargaining agreements negotiated between his Union and the various employer respondents to the Private Hospital Nurses' Award – State during 1996. Attached to the exhibit was a copy of one of the agreements. Mr Ross drew the Commission's attention to the fact that the wage rates set out in the sample 1996 Certified Agreement were the same as those contained within the amended application to amend the Award.

Although application number B424 of 2000 was lodged on behalf of seventeen hospitals who were parties to the Private Hospital Nurses' Award – State the Commission has been assured by Mr Patti, and we accept, that all of the members of the Private Hospitals Association of Queensland (Inc) (PHAQ) consent to the amended application.

Mr Patti has also informed us, and we again accept, that all members of PHAQ have negotiated certified agreements with QNU which provide for wage rates which are at least equal to, but generally more than, the wage rates which we have been asked to insert into the Award.

We have also been informed, and again accept, that inclusion of the new wage rates which reflect previous enterprise bargaining outcomes will not act as a disincentive to future enterprise bargaining. In that regard the parties highlighted that many employers and the QNU are in the process of negotiating their third enterprise bargaining agreements.

In the circumstances we are satisfied that the proposed amendment to the Award, insofar as it incorporates provisions that are based upon certified agreement outcomes, are consistent with principles established by a Full Bench of the Commission in the State Wage Cases of 19 November 1999 and 8 August 2000, respectively.

Further, we are satisfied that it would not be contrary to the public interest to amend the Award to reflect the wage rates contained within the Certified Agreements negotiated between all of the employers in the industry and the QNU in the first round of enterprise bargaining agreements.

We are also satisfied that it is appropriate to amend the Award in terms of the balance of the amended application of 17 August 2000. The other amendments are designed to delete obsolete provisions, to update the Award, to show gradings of registered nurses and to remove names of hospitals that are no longer members of PHAQ and, thereby, no longer bound by the Award. Indeed, the other amendments would seem to be required having regard to the provisions of s. 126 of the Act.

We have not found it necessary to include in the Award amendment any reference to wage rates which may have existed prior to this amendment i.e. prior to 28 July 2000. The wage rates do not distort relativities because they are based on percentage increases which have been negotiated across the whole of the industry. In addition, "the store of industrial knowledge" about previous wage rates is readily ascertainable from other sources without unnecessarily cluttering up the Award.

However, because the State Wage increase operative from 1 September 2000 involves a flat wage increase of \$15.00 per week we will show two (2) columns in the wage rates clause which will record the award wage rates as at 28 July 2000 and also those applicable from 1 September 2000.

For the foregoing reasons we have decided to generally amend the Award as per the amended application lodged on 17 August 2000. By consent of the parties the Award will be amended from 28 July 2000. It will also be amended to incorporate the State Wage Case increase operative from 1 September 2000.

We determine and order accordingly.

D.M. LINNANE, Vice President.  
A.L. BLOOMFIELD, Commissioner.  
D.A. SWAN, Commissioner.

Released: 11 October 2000

*Appearances:-*

Mr J. Patti, of Employer Services Pty Ltd, for Allamanda Private Hospital and 16 other named hospitals and the Private Hospitals Association of Queensland (Inc).  
Mr S. Ross and Ms G. McCaul for the Queensland Nurses' Union of Employees.  
Ms M. Fahl, of the Service Industry Advisory Group, for Health Care of Australia.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 287 – application for exclusion from general ruling*

**Agforce Queensland Industrial Union of Employers AND The Australian Workers' Union of Employees,  
Queensland and Another (No. B1291 of 2000)**

**SHEARING INDUSTRY AWARD – STATE**

COMMISSIONER BLOOMFIELD

10 October 2000

Exclusion from State Wage Case General Ruling of 8/8/2000 – Section 287 of Act – Shearing Industry Award – Strong opposition from AWU – Substantial wage increases from 1/1/2000 – 1/1/2000 wage increases by agreement with Agforce – Wage increases not the type contemplated by Principle 3(b)(ii) – Arbitrated Matter – Commission found that the Award had not received a wage increase since 1992 for a reason other than safety net, State Wage Case, work value or minimum rates adjustments – No basis to exclude the Award from the General Ruling of 8/8/2000 – Application dismissed.

DECISION

Agforce Queensland Industrial Union of Employers has applied for exclusion, under s. 287 of the *Industrial Relations Act 1999*, of the Shearing Industry Award – State from the Declaration of General Ruling handed down by a Full Bench of the Commission on 8 August 2000.

Mr W. Turner, of Turner IR Qld Pty Ltd, who appeared for Agforce, said that wage rates under the subject Award had been amended by decision of Commissioner Blades to provide for substantial wage increases from 1 January 2000. Mr Turner claimed that the wage increases were not the result of safety net, State Wage Case, work value or minimum rates adjustments. He could not say how the increase was said to have been justified.

Mr Turner said it was open to Agforce to apply for an exclusion from the State Wage Case, pursuant to Principle 3(b)(ii) of the State Wage Case Principles, to the extent that wage rates under the Award had increased since 1 February 1992.

In making this submission Mr Turner indicated that the decision of Commissioner Blades, operative from 1 January 2000, had resulted in varying increases for different employees covered by the Award. As a consequence, Agforce did not seek for the State Wage increase to be excluded from the Award *per se* but only to the extent that award wage increases had increased in each classification since 1 February 1992.

On behalf of The Australian Workers' Union of Employees, Queensland (AWU) Mr B. Swan indicated the Union's strong opposition to the application.

In particular, he said that the increases to the Award which had occurred from 1 January 2000 had been the direct result of previous safety net, State Wage Case or minimum rates adjustments. In this regard he highlighted that Commissioner Bechly had decided in 1995 to change various formulae used to calculate the wage rates for certain persons covered by the Award. However, the Commissioner's decision had never been properly implemented and, as a consequence, subsequent State Wage increases had been calculated on incorrect rates using incorrect formulae.

Mr Swan said that the amendment to the Award operative from 1 January 2000 had occurred following the lodgement of an application by AWU to re-calculate various State Wage Case adjustments taking into account the decision of Commissioner Bechly in 1995. He also said that rather than apply for retrospective increases in the Award to reflect Commissioner Bechly's decision, AWU had reached agreement with Agforce that the rates would be adjusted at a single point in time. The date agreed to had been 1 January 2000.

The increase in certain award rates which occurred on and from that date was the direct result of re-calculating State Wage Case increases from 1995 using the formulae determined by Commissioner Bechly. The increase was, therefore, not the type of increase contemplated by Principle 3(b)(ii).

I have had the opportunity of reading Exhibit 5 to these proceedings which are the submissions of AWU in the matter before Commissioner Blades (referred to above). The submissions make it clear that AWU was asking the Commission to insert the wages formulae decided by Commissioner Bechly in 1995 and to "revisit" the rates of wage set out in the Award in light of State Wage Case decisions occurring subsequent to that time.

Further, the Union asked Commissioner Blades to review an earlier decision of Commissioner Bechly relating to the engagement of shed hands on a "not found" basis.

I have also had the opportunity to review the decision of Commissioner Blades in which he found that an agreement existed between Agforce and AWU and amended the Award, operative from 1 January 2000, to reflect that agreement. In reaching that decision he accepted the evidence of Mr Swan about how the agreement had arisen as well as its basis.

I am satisfied upon my review of that material and the submissions and the other exhibits tendered in these proceedings that the Shearing Industry Award – State has not received a wage increase since 1992 for a reason other than safety net, State Wage Case, work value or minimum rates adjustments.

Accordingly, there is no basis upon which the Commission can act to exclude the Shearing Industry Award – State from the General Ruling handed down by a Full Bench of the Commission on 8 August 2000.

Consequently, application number B1291 of 2000 is dismissed.

The Commission determines and orders accordingly.

In addition, because of previous confusion in this Award about actual increases and operative dates, I wish to reinforce that the State Wage increase, which involved a \$15.00 per week increase to classifications under the Award, operated from 1 September 2000. The operative date has not been altered because of Agforce's unsuccessful application in this matter.

Further, as a member of the Shearing Industry panel, I shall request the Registrar to arrange for an amendment to the Award to be published expeditiously which will set out the wage rates operative from 1 September 2000. I shall ask the Registrar to liaise with Agforce and AWU about the formulae to be used, noting the decision of Commissioner Bechly in 1995 and the amendment to the Award made by Commissioner Blades from 1 January 2000, with recourse to myself should the parties be unable to agree on actual rates.

A.L. BLOOMFIELD, Commissioner.

*Appearances:-*

Mr W. Turner, of Turner IR Qld Pty Ltd, for Agforce Queensland Industrial Union of Employers.

Mr B. Swan for The Australian Workers' Union of Employees, Queensland.

Mr M. Smith for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.

Released: 10 October 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 331(c) and s. 335 – application for costs*

**Shane Victor Butler AND Docklea Combined Services (Nos. B873 and B1404 of 2000)**

COMMISSIONER BLOOMFIELD

11 October 2000

Reinstatement – Extension of time application refused – Application by Respondent for Costs – Arbitrated Matter – Costs application falls squarely within the Commission's discretion pursuant to s. 335 of Act – Costs of \$800 awarded to respondent.

DECISION

On 5 September 2000 I issued a decision in which I refused an extension of time application by Mr Shane Victor Butler (case B873 of 2000). In doing so I found that Mr Butler had voluntarily resigned his employment and, as such, was not entitled to seek relief under Chapter 3 – Dismissals of the *Industrial Relations Act 1999*. I also indicated that had I not found that Mr Butler resigned I would have declined to exercise my discretion to extend time within which to lodge the application because the delay had not been satisfactorily explained.

In dismissing the application I indicated that I would consider an application for costs by the employer on the basis that the applicant should never have caused it to expend money to defend the application. I asked the employer to file a statement of costs for my consideration.

A statement of costs (filed as application B1404 of 2000) was subsequently received from Queensland Chamber of Commerce and Industry, Industrial Organisation of Employers (QCCI) for and on behalf of Docklea Combined Services. The application sought costs of \$3,956.00 comprised as follows:-

	\$
1) Instructions to defend	704.00
2) Preparation for trial	2,120.00
3) Advocate	778.00
4) Other applications to Court	314.00
	<u>3,916.00</u>
Travel for Mr Dutton Gold Coast to Brisbane (x2)	40.00
	<u>3,956.00</u>

The amount claimed is grossly excessive.

Although the respondent employer, and its advocate, were inconvenienced because of the failure of the applicant's representative to attend a conciliation conference and by his failure to provide material for the extension of time hearing within two successive timeframes set out in Directions Orders the matter was not complex. Similarly, the actual extension of time hearing was relatively short. It was also not necessary to file the application for costs.

It is clear from the facts of the case spelt out in my earlier decision (165 QGIG 50) that Mr Butler's application never had a chance of success. In my view the application was one made either vexatiously or without reasonable cause (or both) and/or was one which caused costs to be unreasonably incurred by the respondent. Accordingly, the matter is one which falls squarely within the Commission's discretion pursuant to s. 335 of the *Industrial Relations Act 1999*.

In all of the circumstances I am prepared to allow costs of \$800.00 in connection with defence of the application. That amount is not based upon any particular scale but takes account of the fact that the respondent employer was required to brief QCCI to appear in respect of the initial conciliation conference (\$300.00) and the extension of time hearing (\$300.00). I have also made an allowance for time spent by QCCI in chasing material from the applicant's representative which was supposed to have been filed in accordance with the Commission's Directions Orders (\$160.00). Costs of travel from the Gold Coast to Brisbane by Mr Dutton have also been allowed (\$40.00).

The Commission orders that the amount of \$800.00 be paid by Mr Shane Victor Butler to Docklea Combined Services within twenty-two days of the date of release of this decision.

The Commission determines and orders accordingly.

A.L. BLOOMFIELD, Commissioner.

*Appearances:*—

Mr M. Heffernan, of Employment Advisers (Aust), for Mr S. Butler the Applicant.

Ms C. Doyle, with Mr M. Smith of the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers, with Mr S. Dutton for Docklea Combined Services.

Released: 11 October 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 335 – application for costs*

**Leigh Mayfield AND Ridgeway Services and Habib Enterprises t/a On Time Copy Centre (No. B576 of 2000)**

COMMISSIONER BECHLY

2 October 2000

Application for costs – Arising from settlement negotiations for settlement of reinstatement application made pursuant to s. 74 of *Industrial Relations Act 1999* – consideration of basis for awarding of costs under s. 335 – application rejected.

DECISION

Prior to this matter coming on for hearing the parties settled all matters other than that of costs.

A hearing was sought by the applicant to determine whether costs should be awarded. The respondent argues that costs are not available to the applicant and seeks costs for the present hearing.

The applicant commenced full-time employment in October 1999 and was terminated on 3 April 2000. On the material before me the termination arose from the actions of the applicant in working casually outside her usual working hours at other stores operated under the same banner. It was said that this was contrary to the stated policy of the respondent and that the applicant conspired with operators of the other stores to prevent the employer from being made aware of her actions.

The certificate issued pursuant to s. 75(3)(a) of the *Industrial Relations Act 1999* (the Act) states, in part, that the matter to be determined was whether “the policy prohibiting certain work for another employer reasonable.”.

The application was filed on 19 April. A second (the substantive) conference was held on 31 May following which the certificate was issued. By letter of 19 May the solicitors for the applicant informed the respondent that the applicant was not interested in reinstatement but sought compensation and offered to settle for an amount representing four months wages (less Social Security payments), plus \$1,000 costs, the total amount being approximately \$4,000. The respondent rejected the offer and counter-offered to settle for \$500.

On 10 July the applicant offered to settle for \$3,500. This was rejected by the respondent on 13 July.

In late July the applicant secured full-time employment and her solicitors informed the respondent’s solicitors that the compensation claim would be limited to the period without employment. By letter of 4 August the respondent’s solicitors advised that in their view the applicant’s part-time employment prior to gaining full-time employment was relevant and should be dealt with and stated “It plainly goes to the question of your client’s loss, as your client seems to concede.”.

On 11 August the respondent restates for the record that it believes the applicant’s claim is completely without any merit or foundation and puts the applicant on notice that costs would be sought following any proceedings.

On 17 August the applicant’s solicitors inform the respondent’s solicitors that on an examination of earnings from termination to regain of full-time employment, the applicant’s loss was \$1,900 and that the matter could settle for that amount together with \$500 towards costs. This was stated to be the applicant’s last attempt to resolve the proceedings by negotiated settlement.

The sequence of events at this time was affected by the crossing of correspondence. The relevant end result of this was that claim and counter-claim as to prospects of success were made. The applicant provided an unsigned statement of evidence and, at that time, no witness statements were provided, nor were they required by Directions Order, by the respondent.

By correspondence of 21 August the respondent’s solicitors comment on the significant reduction in offer by the applicant, the prospects of success (no greater than 50%) and the limited prospects for continuing employment of the applicant and offer 50% of the applicant’s loss without any contribution to costs.

On 22 August the applicant’s solicitors, in a lengthy response to the letter of 21 August, propose that unless the respondent accedes to the offer of \$2,900 inclusive of costs no consideration will be given to further offers until such time as the respondent’s witness statements have been sighted. These statements were required to be provided, by virtue of a Directions Order, on 28 August 2000.

On 23rd August the respondent’s solicitors replied at some length. A summary of the relevant material is that—

- Apparently the applicant does not wish to make any further offers;
- The original offers of the applicant were too high;
- The applicant has limited prospects of success;
- The respondent’s original offer of \$500 was genuine;
- The respondent recognises the costs of proceeding further;
- The respondent would be prepared to pay half the applicant’s loss, being \$950;
- Each party to bear their own costs.

On 25 August that offer was rejected by the applicant and the earlier offer of \$1,900 together with some contribution to costs was restated.

On 28 August the respondent questioned the stated earnings of the applicant but offered to settle the matter for \$1,500 with each party bearing their own costs.

On 29 August the applicant's solicitors offered to settle for \$1,800 with the matter of costs to be determined by the Commission. In the alternative it was offered that the matter settle for \$1,900 plus \$2,000 for costs.

Section 335 is in the following terms:-

- 335.(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 connect with the conduct of the application."

The applicant relies on subsection (b) of s. 335 and argues that the respondent's conduct of the matter was unreasonable in that it failed to make a reasonable or proper offer during conciliation processes or later until such a time that the applicant had incurred substantial additional costs in the preparation and filing of witness statements. The applicant compares those costs with the lack of costs incurred by the respondent for the preparation and filing of witness statements.

The applicant refers to the original offer made as being reasonable in the circumstances at the time, there being no way of knowing when the applicant may secure further equivalent employment.

The respondent, on the other hand, adopts the view that its offer was reasonable, for the same reason, and that it was not unreasonable to maintain this position until there was some knowledge as to the applicant's future circumstances after equivalent employment was secured.

The respondent argues that the applicant's loss was only made apparent to it after the applicant's statement was provided. The first occurred by the provision of a draft statement on 14 August. The matter was settled within about two weeks of that date. It further argues that the offers made by the applicant were always excessive because it was the contention of the respondent that the applicant was earning further funds (by way of casual employment).

I was referred by the applicant to various decisions concerning the award of costs. It must however consider the facts of the matter before me.

If the matter had proceeded to a hearing the principle issue to be determined was to have been whether the policy adopted by the respondent as to restrictions on working for other employers in the same business was reasonable and whether the policy was known to the applicant. An ancillary matter concerning compensation if the applicant was successful would have been the expectation that the applicant might reasonably have had of continuing employment in the light of performance issues.

If the applicant had been successful it is unlikely on the material available to me that costs would have been awarded. The costs would have been considerable considering the evidence to be called by the respondent. The applicant relied on her own evidence.

If the matter had gone against the applicant she would still have to have borne all her own costs.

The parties chose to settle before the matter proceeded to a hearing and determination as to the propriety of the policy adopted by the respondent. Costs were thus limited to those incurred to date of settlement.

The discretion to make an award of costs arises when the costs sought are incurred because of an unreasonable act or omission of a party. The determination as to whether a party has acted unreasonably is made more difficult in circumstances where the substantive matter is not dealt with by a hearing of all the contentions.

Negotiations in this Tribunal are often robust but I would not consider the circumstances outlined to me as being unusually robust so as to trigger the discretion. While the respondent omitted to make further offers beyond that first made until it was made aware of the actual loss incurred, I would not consider that to be unreasonable, particularly in the light of knowledge said to be held by it that the applicant had some employment, albeit casual, during the negotiation period.

There was pressure from the applicant to settle before significant costs were incurred in the preparation and filing of the sworn witness statement. The complaint is that the respondent did not incur similar costs because its witness statements were not prepared at that time. This is a function of the Directions Order, not the result of an action, unreasonable or otherwise, of the respondent.

The coinciding of the securing of a full-time job by the applicant, the availability of information as to actual loss incurred and the final settlement of the matter covered a relatively short period and not a period which could be described as unreasonable as a result of actions by the respondent.

The application for an award of costs against the respondent is refused.

The respondent has sought costs for the matter now before the Commission.

The parties agreed to settle on compensation of \$1,800 and a determination as to an award of costs by the Commission. In the face of that agreed process an award of costs is not appropriate either on the basis of agreed settlement between the parties or through s. 335.

R.E. BECHLY, Commissioner.

Released: 4 October 2000

Appearances:-

Mr J. Dwyer of Reidy and Tonkin, Solicitors, for the Applicant.

Mr R. Cowan of Tucker and Cowen, Solicitors, for the Respondent.

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 274 – general powers of the Commission***Retailers' Association of Queensland Limited, Union of Employers  
AND Queensland Retail Traders and Shopkeepers Association (Industrial  
Organization of Employers) and Others (Nos. B579 of 2000 and B1301 of 2000)**VICE PRESIDENT LINNANE  
COMMISSIONERS EDWARDS AND SWAN

21 September 2000

Application to strike out – application denied.

## REPORT ON DECISION (as edited)

In giving their decision from the Bench on 21 September 2000, the Full Bench stated:–

“We have before us an application by the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) seeking to have Case No. B579 of 2000 struck out for failure on the part of the Retailers' Association of Queensland Limited, Union of Employers (RAQ) to comply with a directions order issued by this Commission on 26 July 2000. Case No. B579 of 2000 is an application seeking, *inter alia*, to permanently extend trading hours on the four (4) Sundays prior to Christmas Day. It is a matter that the QRTSA and others have indicated they will strenuously defend.

On 20 July 2000 the Commission acceded to a request by the RAQ to have Case No. B579 of 2000 heard instead of other trading hours matters which had been listed for hearing. It was confirmed on that day that Case No. B579 of 2000 would be listed for hearing in the week commencing 25 September 2000. At that time the Commission indicated that it would abandon other trading hours' hearings dates in order to facilitate the hearing of B579 of 2000 in the week commencing 25 September 2000, ie to enable the parties to prepare their material for B579 of 2000. On this day the Commission indicated that the Bench as constituted did not have other available days prior to November 2000 in which to list Case No. B579 of 2000 for hearing.

A directions order was issued to the parties on 26 July 2000. That directions order required the RAQ to ‘supply to all interested parties opposing application B579 of 2000, and lodge in the Commission, statement(s) of evidence, from all witnesses to be called and which are to be relied upon at the hearing by 4.00 p.m. on Monday, 21 August, 2000’. No request for an extension of time to comply with that direction was sought by the RAQ.

On 5 September 2000 the Registry received correspondence from the QRTSA and the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (the ‘Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees’). In their correspondence the QRTSA stated that they had received the ‘RAQ materials and affidavits’ in B579 of 2000 at 5.30 p.m. on 4 September 2000, ie some 14 days late. The QRTSA sought a variation to the directions order so that instead of supplying their witness statements by 11 September 2000 they be required to supply their statements by 4.00 p.m. on 22 September 2000. In the SDA's correspondence of 5 September 2000 they indicated that they had received ‘none of the material that was to have been received by 21 August 2000’ and as such sought an extension of time for delivery of their witness statements to 22 September 2000.

In addition on 4 September 2000 the QRTSA filed an application (B1301 of 2000) to amend the *Trading Hours Order – Non-Exempt Shops Trading by Retail – State* to remove the ability to trade until midnight on 23 December 2000 as that date in the year 2000 falls on a Saturday.

As a result of the correspondence received from the QRTSA and the SDA in B579 of 2000 and the receipt of application B1301 of 2000, the Commission listed both matters on 7 September 2000. At that time the Commission joined Case No. B579 of 2000 and Case No. B1301 of 2000. The Commission further prevailed upon the QRTSA and the SDA to have their witness statements in Case No. B579 of 2000 available to the parties by midday on 21 September 2000 to enable the RAQ to consider the material and determine whether or not evidence in reply was needed. The QRTSA did undertake to provide the RAQ with an outline of their case in B1301 of 2000 by 15 September 2000 together with any witness statements that they may have prepared by that date. The remainder of their witness statements in B1301 of 2000 were to be filed and served on RAQ by midday on 21 September 2000.

The RAQ did indicate to the Commission on 7 September 2000 that they had ‘a couple of outstanding evidence statements’ in Case No. B579 of 2000 which they undertook to have to the QRTSA ‘by next week sometime’ ie by 15 September 2000. The RAQ did indicate that they had ‘liaised with Mr Pratt’ about these evidence statements. The RAQ also indicated that any ‘rebuttal evidence or extra evidence’ in relation to B1301 of 2000 would be provided by 18 September 2000. The RAQ was given until the commencement of the hearing on 25 September 2000 to provide any witness statements in reply in B579 of 2000.

The Registry received correspondence from the QRTSA at 11.00 p.m. on 18 September 2000 indicating that they had received further RAQ witness statements in B579 of 2000 at approximately 7.00 p.m. on 18 September 2000. The statements provided were said to be from eight (8) additional witnesses, going to some 163 pages and including demographic data and statistical data. The correspondence from the QRTSA indicated that they had consented to ‘a couple of brief affidavits’ being provided late having been ‘led to believe that the delay was because certain people were not available to complete their affidavits’. On 7 September 2000 the RAQ did give an undertaking to the Commission to provide the parties in the ‘next week’ with the ‘couple of outstanding evidence statements’. The Commission was also informed that these statements would be late because the persons had ‘been away interstate and for various reasons haven't signed off on their final draft’.

The matter was again listed for hearing on 20 September 2000. The Commission has had the opportunity to peruse the material delivered to the QRTSA on 18 September 2000 and to the SDA, The Australian Workers' Union of Employees, Queensland (the ‘AWU’) and the National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers (the ‘NMAA’) on 19 September 2000. That material consists of the following Affidavits that are said to pertain to Case No. B579 of 2000 and not Case No. B1301 of 2000:–

- Glenda Pietzsch of City Beach;
- Glenda Loader of Country Road;
- Glenn Giesler of Toys ‘R’ Us;
- Steven Douglas Bridges of Byvan (Qld) Pty. Ltd.;
- Marc Olding of Myer Grace Bros.; and
- Bruce Dier of UMR Research, Marketing and Issues Management Consultants.

The material contained in each of the abovementioned Affidavits go to support the RAQ's application in B579 of 2000. It does not appear to be material in response to the QRTSA's application in B1301 of 2000. Some of the Affidavits contain substantial demographic and statistical information, eg a statewide survey conducted by UMR Research, Marketing and Issues Management Consultants which was commissioned by the RAQ.

There is some contention as to whether the Affidavit of Kevin George Goodchild of Coles Supermarkets Australia Pty. Ltd. was delivered to the QRTSA on 4 September 2000 or 18 September 2000. The RAQ assert that the material was provided on 4 September 2000 whilst the QRTSA claim to have only received it on 18 September 2000.

The SDA, the AWU and the NMAA support the QRTSA's application.

To require the QRTSA to be in a position to respond to the RAQ's material served on 18 September 2000 by midday on Thursday 21 September 2000 or just prior to the commencement of the hearing on 25 September 2000 would be a denial of procedural fairness. The original directions order of 26 July 2000 gave the RAQ until 21 August 2000 to file and serve its material in B579 of 2000. Under that directions order the QRTSA was given 21 days to respond to the RAQ's material. Given that the RAQ was 14 days late in delivering their original witness statements, the QRTSA's time for provision of their witness statements was shortened from the 21 days to 16.5 days. To now limit the time of the QRTSA, the SDA, the AWU and the NMAA's preparation of their defence of the RAQ's application to 6 days (ie. to the commencement of the hearing) has the very real potential to deprive those organisations of the opportunity to properly prepare both their material in response and their cross examination of RAQ witnesses. This in turn would deny those organisations the opportunity to properly defend the RAQ's application.

We are not prepared to accede to the application to strike the matter out but we have formed the view that to commence the hearing of Case No. B579 of 2000 and Case No. B1301 of 2000 on 25 September 2000 would deny the QRTSA, the SDA, the AWU and the NMAA procedural fairness.

Order Accordingly."

Dated this twenty-first day of September, 2000.

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

*Appearances:-*  
Ms P. Spencer, with her Ms S. Lindsay, appearing for the applicant, the Retailers' Association of Queensland Limited, Union of Employers.  
Ms T. Lane appearing for The Australian Workers' Union of Employees, Queensland. Mr D. Pratt appearing for the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).  
Mr C. Casey appearing for the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.  
Mr R. Wotherspoon appearing for the National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers.

Released: 11 October 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Ross Ernest Taylor of the Department of Employment, Training and Industrial Relations  
AND Leah Ross trading as Old Dear's Cleaning Company (No. W131 of 2000)**

COMMISSIONER BLOOMFIELD

3 October 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 22 August and 3 October 2000, this Commission, after having decided that Linda Joy Bruckner was underpaid wages by Leah Ross trading as Old Dear's Cleaning Company, in accordance with the provisions of the Contract Cleaning Industry Award – State, doth order as follows:-

1. That Leah Ross trading as Old Dear's Cleaning Company pay to Linda Joy Bruckner the amount of thirty dollars and twenty-one cents (\$30.21) in respect of unpaid wages for the period between 9 December 1999 and 21 January 2000.
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 third day of October, 2000.

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

Operative Date: 3 October 2000  
Order – Unpaid wages  
Released: 5 October 2000

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Ross Ernest Taylor of the Department of Employment, Training and Industrial Relations  
AND Leah Ross trading as Old Dear’s Cleaning Company (No. W132 of 2000)**

COMMISSIONER BLOOMFIELD

3 October 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 22 August and 3 October 2000, this Commission, after having decided that Kerry Leigh Prior was underpaid wages by Leah Ross trading as Old Dear’s Cleaning Company, in accordance with the provisions of the Contract Cleaning Industry Award – State, doth order as follows:–

- 1. That Leah Ross trading as Old Dear’s Cleaning Company pay to Kerry Leigh Prior the amount of five hundred and forty-eight dollars and forty-nine cents (\$548.49) in respect of unpaid wages for the period between 29 September 1999 and 16 February 2000.
- 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 third day of October, 2000.

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

Operative Date: 3 October 2000  
Order – Unpaid wages  
Released: 5 October 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Ross Ernest Taylor of the Department of Employment, Training and Industrial Relations  
AND Leah Ross trading as Old Dear’s Cleaning Company (No. W133 of 2000)**

COMMISSIONER BLOOMFIELD

3 October 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 22 August and 3 October 2000, this Commission, after having decided that Ann Rosemary Bruckner was underpaid wages by Leah Ross trading as Old Dear’s Cleaning Company, in accordance with the provisions of the Contract Cleaning Industry Award – State, doth order as follows:–

- 1. That Leah Ross trading as Old Dear’s Cleaning Company pay to Ann Rosemary Bruckner the amount of six hundred and thirty-nine dollars and thirty-six cents (\$639.36) in respect of unpaid wages for the period between 3 December 1999 and 21 January 2000.
- 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 third day of October, 2000.

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

Operative Date: 3 October 2000  
Order – Unpaid wages  
Released: 5 October 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Rodney James Whitson of the Department of Employment, Training and Industrial Relations  
AND Hay-Ric Pty Ltd (No. W149 of 2000)**

COMMISSIONER BLOOMFIELD

2 October 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 2 October 2000, this Commission, after having decided that Earl Stanley Young was underpaid wages by Hay-Ric Pty Ltd, in accordance with the provisions of the Food and Drug Store Employees’ Award – Southern Division (Eastern District), doth order as follows:–

- 1. That Hay-Ric Pty Ltd pay to Earl Stanley Young the amount of two thousand eight hundred and fifty-eight dollars and thirty-eight cents (\$2,858.38) in respect of unpaid wages for the period between 22 October 1998 and 4 February 2000.
- 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: 5 October 2000

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Kim Patricia Harvey AND Rodney Michell Dick t/a Rod Dick’s Auto Repairs (No. W47 of 2000)**

COMMISSIONER BLADES

6 October 2000

ORDER

THIS matter coming on for hearing before the Commission at Bundaberg on 11 August 2000 and at Brisbane on 6 October 2000, this Commission doth order as follows:–

1. That the Applicant and Respondent having agreed on 11 August 2000, I now order that that sum of \$2,217.18, which I find to be payable and unpaid, be paid by the Respondent to the Applicant.
2. I order that the amount of \$2,217.18 be paid by way of instalments.
3. That the amount of \$500.00 be paid within 1 month of today’s date, i.e. 6 November 2000.
4. That the amount of \$500.00 be paid by 6 January 2001.
5. That the amount of \$500.00 be paid by 6 March 2001.
6. That the amount of \$717.18 be paid by 6 May 2001.
7. I further order that in default of any one instalment the total balance owing will become due and payable immediately.

Dated this sixth day of October, 2000.

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

Operative Date: 6 October 2000  
Order – Unpaid Wages  
Released: 10 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 (No. B177 of 2000)**

VICE PRESIDENT LINNANE  
COMMISSIONERS EDWARDS AND SWAN

9 October 2000

SUPPRESSION ORDER

THIS Commission, after hearing the parties to the above matter in Brisbane on 27 September 2000, doth hereby Order pursuant to s. 679 of the *Industrial Relations Act 1999*, that the following numerical figures in parts of transcript dated 22 August, 2000 be withheld from release or search absolutely until further order of the Commission:–

1. Page 377, line 55;
2. Page 378, line 7;
3. Page 382, lines 20 and 58;
4. Page 383, line 13;
5. Page 384, lines 8, 15 and 24;
6. Page 385, lines 14, 49 and 53;
7. Page 386, lines 7, 23 and 33.

And with respect to Exhibit 21, paragraphs 5, 8 and 9.

Dated this ninth day of October, 2000.

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

Operative Date: 9 October 2000  
Order – Suppression

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 (No. B178 of 2000)**

VICE PRESIDENT LINNANE  
COMMISSIONERS EDWARDS AND SWAN

9 October 2000

SUPPRESSION ORDER

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

(a) From the transcript dated 31 July, 2000;

- 1. Page 5, line 12;
- 2. Page 10, line 25;
- 3. Page 18, lines 59 and 60;
- 4. Page 19, lines 1, 8, 13, 45 and 46;
- 5. Page 20, lines 33 and 35;
- 6. Page 22, lines 19 and 20;
- 7. Page 32, lines 33 and 34;

(b) From the transcript dated 1 August, 2000;

- 1. Page 58, lines 42, 43, 44, 47, 51 and 57;
- 2. Page 59, lines 6, 21, 29, 39, 40 and 44;
- 3. Page 65, lines 23 and 45;
- 4. Page 69, lines 22, 23, 24 and 25;
- 5. Page 75, line 12;

(c) Exhibit 7:–

- 1. paragraph 27, dot point 6, second line;
- 2. the table in paragraph 37;
- 3. paragraph 57, lines 2, 3 and 4;
- 4. the table in paragraph 58; and

(d) Exhibit 6.

Dated this ninth day of October, 2000.

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

Operative Date: 9 October 2000  
Order – Suppression

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application to amend

**Training Recognition Council AND Textile, Clothing and Footwear Union of Australia, Queensland Branch, Union of Employees (No. B1444 of 2000)**

**ORDER – APPRENTICES’ AND TRAINEES’ WAGES AND CONDITIONS (EXCLUDING CERTAIN QUEENSLAND GOVERNMENT ENTITIES)**

COMMISSIONER BROWN

5 October 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 5 October 2000, this Commission doth Order that the said Order be amended as follows as from the fifth day of October, 2000:–

By deleting clause 3.1.1 (Textile Clothing and Footwear Training Package) from Schedule 13 “Light Manufacturing Industry” and inserting the following in lieu thereof:–

“3.1.1 Textile, Clothing and Footwear Training Package

Wage progression arrangements for traineeships based on qualifications in the above National Training Package shall be in accordance with clause 3 of Schedule 1 of this Order.”.

Dated this fifth day of October, 2000.

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

Operative Date: 5 October 2000  
Amendment – Schedules  
Released: 6 October 2000