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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999
Industrial Relations (Tribunals) Rules 2000

NOTICE

The following Agreements have been certified by the Commission:-

No/s	Title	Date certified	Cancelling
CA235/01	Vinidex Pty Limited Queensland Enterprise Bargaining – Certified Agreement	21/6/01	CA123/99
CA230/01	National Hide Processors Pty Ltd, Beaudesert-Boonah Road, Beaudesert, Queensland, Enterprise Bargaining Agreement 2001 - Certified Agreement	22/6/01	CA418/99
CA242/01	Frigmobile Brisbane Distribution Operations (Clerical Employees) - Certified Agreement 2001	27/6/01	
CA250/01	Sigma/ASU - Southern and Central Queensland - Certified Agreement 2001	29/6/01	
CA251/01	PWM Australia Pty Limited Nudgee Maintenance Personnel – Enterprise Bargaining Agreement 2001 - Certified Agreement	29/6/01	
CA255/01	Flexistar Part Time Enterprise Agreement 2001 - Certified Agreement	2/7/01	

The following Agreement has been amended by the Commission:-

	Date amended
CA592/99 Arnott's Biscuits - Certified Agreement 1999 – 2001	27/6/01

The following Agreement has been extended by the Commission:-

	Date extended
CA263/99 Sunstate Fuel Townsville Terminal - Certified Agreement (Extended to 21/6/02)	28/6/01

E. EWALD
Industrial Registrar

INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(1) – appeal against decision of industrial commission**Garth Llewellyn AND Property Sales Association of Queensland, Union of Employees (No. C13 of 2001)**

PRESIDENT HALL

28 June 2001

DECISION

By a decision of 23 February 2001 the Queensland Industrial Relations Commission, on an application pursuant to s. 278 for an order about the payment of unpaid wages, held that Ms Maryann Pierce had an entitlement to wages under Part B of the Property Sales Award Queensland – State. In the event that the parties were unable to agree on the quantum of the entitlement, provision was made for the matter to be relisted. An appeal against that decision was filed on 16 March 2001. Directions were made for the exchange of written submissions. Written submissions were exchanged. The matter was listed for 3 May 2001. On 2 May 2001 the appeal was withdrawn. The respondent seeks an order for costs.

It is accepted by the respondent's solicitor that in order to succeed the respondent must bring the case within the power at s. 335(1)(a) of the *Industrial Relations Act 1999*. To do that, the respondent must show that the appeal was made "vexatiously or without reasonable cause" at the time at which it was instituted.*

[*Because of the way in which the case is subsequently disposed of, it is unnecessary to consider whether, as Ryan J observed in *Imogen Pty Ltd v Sangwin* (1996) 70 IR 254 at 261,

"... an appeal stands in somewhat different case from proceedings at first instance in that discontinuance may bear indirectly on the discretion conferred... by tending to confirm an impression derived from the grounds of appeal and the reasons for the judgement below that the prospects of success on the appeal were slight.".]

The appellant has waived privilege and given evidence that before instituting the appeal it had taken the advice of counsel and had been advised that it had an arguable case. In *Re Commonwealth of Australia; ex parte Marx* 75 ALJR 470 at 476 McHugh J had to consider whether costs should be awarded against an (out of time) applicant for an order *nisi* for *certiorari* who had proceeded in the face of advice from counsel that, although the ground which he sought to urge in the substantive matter were arguable, they were "unlikely to succeed". Notwithstanding that advice and notwithstanding that His Honour's view was that the application for an order *nisi* was so weak that it should not be remitted to the Federal Court, His Honour was not prepared to hold that the application had been commenced "without reasonable cause" within the meaning of s. 347 of the *Workplace Relations Act 1996* (Cth). Section 347 of the *Workplace Relations Act 1996* (Cth) is the counterpart provision of s. 335 of the *Industrial Relations Act 1999*, save that s. 347 is expressed as a limitation on power otherwise existing*, whereas s. 335 is a grant of power exercisable in limited circumstances. Importantly, in both cases the "limitation" refers to litigation commenced "vexatiously or without reasonable cause". It seems to me to be appropriate to take guidance from decisions upon the Commonwealth Act bearing upon when litigation may be said to be commenced "vexatiously or without reasonable cause".

[* Which may explain the reference to "discretion" by Ryan J, op.cit.]

This case is not *Re Commonwealth of Australia; ex parte Marx* 75 ALJR 470. I have been taken to the written submissions of each of the appellant and of the respondent. It would be invidious to comment on the prospects of success of an appeal which has been withdrawn. It is sufficient to say that the appellant's grounds of appeal, which went to the registration process for the singular individual flexibility agreements permitted by Part C of the Property Sales Award Queensland – State, were plainly arguable. Making, without deciding, the assumption that there is a difference in meaning between "vexatious" and "without reasonable cause" and that "without reasonable cause" is the lower standard, it seems to me that the appeal in this matter could not be so characterised when it was made. Success depended upon the resolution in the appellant's favour of one or more arguable points of law.* In *Kanan v Australian Postal and Telecommunications Union* (1992) 43 IR 257 at 264-265 Wilcox J observed:–

"If success depends upon the resolution and the applicant's favour of one or more arguable points of law, it is inappropriate to stigmatise the proceeding as being 'without reasonable cause'."

[*This is not a case such as *Imogen Pty Ltd v Sangwin* (1996) 70 IR 254 where a tribunal at first instance had considered what would have occurred if the critical point of law had been determined in the appellant's favour and had made findings of fact which doomed the appellant's case to failure in any event.]

The respondent contends that the appeal was filed for an extraneous purpose. It is put that the appeal was instituted, not to challenge the decision of the Commission, but to create a bargaining chip which might be used in settlement negotiations. Mr Bennett tells me, and I accept, that Ms Pierce is so distressed by the experience of litigation that she is unable to give evidence. That leaves the respondent with the difficulty that it has to rely on correspondence put in evidence through its secretary. It is certainly true that that correspondence shows that the appellant sought to settle more than the appeal. So also did the respondent. The respondent sought to settle the taxation of the monies to be paid pursuant to the decision of the Commission, and to settle matters relating to unpaid superannuation contributions which had not been raised before the Commission. It is quite normal for parties to litigation negotiating for a settlement to seek to settle all matters rather than the one matter currently before the Courts. Some criticism is made of the appellant because he sought a settlement that would bar a future claim by Ms Pierce's husband (who had also been employed by him). It is put that granted the appellant's vehement denial that Ms Pierce's husband has no legitimate claim, the demand for such a settlement clouds his conduct with suspicion. The answer, or so it seems to me, was given by the appellant from the witness box and in the correspondence. The answer is that, because Ms Pierce's husband admitted to the appellant having instigated the complaint by his wife, he was fearful that Mr Pierce might advance a claim of his own. I can understand such a view being honestly held, particularly by a person such as the appellant who (notwithstanding the decision of the Commission) continues to regard himself as the wronged party. In circumstances where the proceedings in the Magistrate's Court instituted by the respondent were not the subject of cross-examination, I am not prepared to treat the proceedings as colourable.

I dismiss the application for costs.

Dated this twenty-eighth day of June, 2001.

D.R. HALL, President.

Appearances:–

Mr A. Horneman-Wren instructed by Livingstones (Australia) for the appellant.

Mr S. Bennett of Deacons Lawyers, for Property Sales Association of Queensland, Union of Employees.

Released: 28 June 2001

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 276 – power to amend or void contracts***Colin Earner AND Queensland Investment Corporation and QIC Properties Pty Ltd (No. B775 of 2001)**

COMMISSIONER BLADES

29 June 2001

Unfair contract – Section 276(6) *Industrial Relations Act 1999* – Applicant an employee (not a public servant) earning more than \$71,200 – Whether applicant excluded – Applicant unemployed at time application was made – Whether a person who “has” an annual wage – “Has” found to be a descriptive expression rather than indicating contemporaneity – Whether only public service officers are excluded – Words in brackets in *Braunack v Couriers Please* 165 QGIG 225 regarding s. 276(6) held to be dicta and not followed – Held applicant excluded.

DECISION

This preliminary issue involves the question whether the applicant, who seeks relief under the provisions of s. 276 of the *Industrial Relations Act 1999* (the Act) relating to unfair contracts, is excluded from being entitled to rely upon those provisions by reason of s. 276(6).

The applicant was a Senior Leasing Executive with the Queensland Investment Corporation which is a wholly owned subsidiary of QIC Properties Pty Ltd. He earned a salary of more than \$71,200 per annum and was not a public servant. He has not made an application under s. 74 of the Act for the same matter. He was, at the time he made the application, unemployed and not in receipt of any wages.

Section 276(6) of the Act provides as follows:–

“(6) A person can not make an application under this section if –

(a) an application has been made under section 74 for the same matter; or

(b) the person –

(i) is not a public service officer employed on tenure under the *Public Service Act 1996*; and

(ii) has an annual wage of more than \$68,000 or a greater amount stated in, or worked out in a way prescribed under a regulation.”.

The figure of \$68,000 is to be read as \$71,200 as a consequence of s. 4 of the *Industrial Relations Regulation 2000*.

The respondent alleges that the applicant is a person who is disqualified by the provisions of s. 276(6)(b) and is therefore not entitled to make the present application.

It is alleged that the applicant is not excluded for two reasons. First, there is an apparent absurdity in s. 276(6), a submission which is based upon a decision of the Commission as presently constituted, in *Braunack v Couriers Please* (2000) 165 QGIG 225, affirmed on appeal in *Couriers Please v Graham Braunack and Others* 166 QGIG 141. Secondly, s. 276(6)(b)(ii), because of the words “has an annual wage of”, excludes only a person who has the following criteria satisfied:

(a) The person is an employee;

(b) The person is in employment at the time that the application is made under s. 276; and

(c) The person is in receipt of an annual wage at the time of making the application which exceeds \$71,200 (or a higher amount prescribed by regulation).

Dealing with the first part of the submission, this Commission in *Braunack*, in holding that “party” as used in s. 276(3) included natural persons who were in partnership, said:

“(It can readily be seen and is conceded by both learned Counsel that a literal reading of this subsection creates an absurdity, i.e. that a person cannot make an application unless the person is a public service officer. That was clearly not intended by the Legislature and paragraph (ii) (sic) should be read without the word ‘not’.)”.

It was submitted that because the President agreed with the Commission’s conclusions and with its reasons this Commission is therefore bound by the words used in that passage. The submission proceeded that by deleting the word “not” from the provision, s. 276(6)(b) excludes only public service officers who are (a) employed on tenure under the *Public Service Act 1996* and (b) have an annual wage of \$71,200 or more.

It is my view that this interpretation is not correct and the statement/concession in *Braunack* was not correct. In *Braunack*, learned Counsel made the concession “on the run”, substantially contributed to by a version of the *Industrial Relations Act 1999* (from which he had been reading) which contained serious and substantial errors. Added to that circumstance was the fact that there were no submissions on the point which was not in contention and a decision about which was not sought.

While some criticism as to the draftsmanship of s. 276(6) may be justified, the provision in a simplified form can be read as “A person can not make an application if the person is other than a public servant on tenure and has an annual wage of more than \$68,000”. Read in that manner, the provision makes sense and one does not need to delete words used by the Legislature (i.e. the word “not”). As the text book **Pearce and Geddes Statutory Interpretation in Australia** says at para 2.12:

“As a general principle, the courts have pointed out that they are not at liberty to consider any word or sentence as superfluous or insignificant. All words must prima facie be given some meaning and effect.”.

This aspect of the matter was not even considered in *Braunack*.

Section 276(6) was in the following form when the *Industrial Relations Act 1999* came into force on 1 July, 1999. The subsection reads:–

“(6) A person can not make an application under this section if –

- (a) an application has been made under section 74 for the same matter; or
- (b) the person is someone to whom chapter 3, part 2 does not apply under section 72.”.

Chapter 3 Part 2 relates to Unfair Dismissals. Section 72 of the Act at that time provided, *inter alia* –

“Section 73(1) does not apply to –

... .

(e) an employee –

- (i) who is not employed under an industrial instrument; and
- (ii) who is not a public service officer employed on tenure under the *Public Service Act 1996*; and
- (iii) whose annual wages immediately before the dismissal are more than \$68 000 or a greater amount stated in, or worked out in a way prescribed under a regulation.”.

Paragraphs (a), (b), (c) and (d) relate to employees on probation, short term casuals and employees employed for specified periods or tasks. The subsection was amended as from 23 July, 2000 by the *Training and Employment Act 2000* where amendments were made but ss (1)(e) remained constant. By that Act however, the present ss (6)(b) was inserted into s. 276, in lieu of the existing ss (6)(b).

Section 14B of the *Acts Interpretation Act 1954* permits the use of extrinsic material in the interpretation of a statute, in circumstances where there is ambiguity or obscurity, to provide an interpretation of the provision; if the ordinary meaning leads to a result that is absurd or unreasonable, to provide for an interpretation which avoids that result; or in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision. It seems to me that those provisions authorise resort to the extrinsic material available in this case, namely the *Explanatory Notes* to the *Training and Employment Bill 2000* which provide:

“Clause 40 amends section 276(6) to limit the exclusion from section 276 to persons whose annual wage is greater than \$68,000 or a greater amount prescribed by a regulation, and who are not public service officers employed on tenure under the *Public Service Act 1996*.”.

Resort to the Minister’s Second Reading Speech to the *Training and Employment Bill 2000* is also authorised and in that regard, the Hon. P.J. Braddy, Minister for Employment, Training and Industrial Relations said:–

“The amendments to the Act fall within three categories. The first involves technical amendments that ensure the provisions of the Act operate in the manner that they were intended. Users of the Act have brought these to my attention since the introduction of the Act in July, 1999. These amendments do not involve any change to the policy position established in the Act last year.”.

The other categories related to unfair dismissal for Federal award employees and consequential amendments.

As originally inserted in the Act, the exclusion operated on an employee who possessed three characteristics, that is, was not employed under an industrial instrument, was not a public servant on tenure and whose wages exceeded \$68,000. The simplified form of s. 276(6)(b) as amended and as related above, namely, “A person can not make an application if the person is other than a public servant on tenure and has an annual wage of more than \$68,000” is entirely consistent with that former provision and with the Explanatory Note.

It is my view that the interpretation placed upon the provision in the Commission’s decision in *Braunack* is plainly not correct and should not be followed. It was *obiter dicta*. In *Slack v Leeds Industrial Co-operative Society Ltd* (1923) 1 Ch 431 Lord Sterndale MR said:

“*Dicta* are of different kinds and of varying degrees of weight. Sometimes they may be called almost casual expressions of opinion upon a point which has not been raised in the case, and is not really present to the judge’s mind. Such *dicta*, though entitled to the respect due to the speaker, may fairly be disregarded by judges before whom the point has been raised and argued in a way to bring it under much fuller consideration.”.

In *West (Richard) & Partners (Inverness) Ltd v Dick* (1969) 1 All ER 289 Megarry J said:

“Some authorities distinguish between *obiter dicta* and *judicial dicta*. The former are mere passing remarks of the judge, whereas the latter consist of considered enunciations of the judge’s opinion of the law on some point which does not arise for decision on the facts of the case before him, and so is not part of the *ratio decidendi*.”.

The statement in *Braunack* was not necessary to the decision and in fact appears to have no relevance at all to the decision. It was a mere passing remark, hence the brackets. It is hard to imagine a more casual expression of opinion upon a point not raised in the case.

It is certainly acknowledged that the doctrine of judicial precedent requires each Court or Tribunal in its own hierarchy to, without question, adhere to and follow the decisions of the Court or Tribunal superior to it in that hierarchy. A lower Court or Tribunal is clearly bound by the decisions of a Court or Tribunal higher to it. It is not bound by its own decisions or by the decisions of a Court or Tribunal of equal ranking although such decisions are usually persuasive, see for example *Harrison v Electcom Limited* 163 QGIG 347 at 349. A Court or Tribunal certainly does not have to follow its own decisions or those of a Tribunal of equal rank if it comes to the conclusion that the prior decision was incorrect. This is more so when the specific point at issue is raised and argued in the later case for the first time.

As to the submission that because the President adopted the reasons of the Commission and therefore the Commission is bound by the passage, it is pointed out that the President agreed “with the Commission’s conclusions and with its reasons”, presumably the reasons for that conclusion. That is far removed from saying that the President agreed with every word in the decision, in fact the President spoke of using different words or in a shortened form. It is significant that the words in the passage were not necessary for and therefore not reasons for the conclusion reached by the Commission and in my view it cannot be said that every word in the Commission’s decision became binding because the President agreed with the conclusion. The doctrine of judicial precedent does not go that far.

I reject the submission that s. 276(6)(b) excludes only public service officers employed on tenure under the *Public Service Act* who have an annual wage of \$71,200 or more. I am satisfied that the sub-paragraph excludes a person other than such a public service officer on tenure and who has an annual wage in excess of \$71,200.

The submissions in support of the second contention refer to the differences between s. 72 which makes it clear that the unfair dismissal provisions do not apply to certain categories of employees and to s. 276(6) which states that even though a person might be covered by s. 276, in certain circumstances that person "can not make an application". Because of the differences, s. 276(6) requires the Commission to assess the situation as at the time when the application is made whether the exclusion in paragraphs (a) and (b) apply. This is because s. 276(6) must have a temporal element to it, that is, there must be a point in time as at which the Commission determines whether the applicant is excluded. Section 276(6)(a) requires the Commission to exclude a person who at the time of making the application under s. 276 had already made an application under s. 74 for unfair dismissal. The same approach must be adopted in relation to s. 276(6)(b), i.e., it requires the Commission to exclude a person who at the time of making the application under s. 276 falls within the criteria in paragraph (i) and (ii). Thus a person not in receipt of a wage at the time that the application is made under s. 276 is not excluded. This contention is further supported by looking at the provisions of s. 72(1)(e)(iii) whether before or after the amendment and which, in effect, provide:

"an employee . . . whose annual wages immediately before the dismissal are more than \$71,200."

Furthermore, s. 276(6) uses a present tense with the word "has" whereas it could have used the past tense "had" if it were to remain consistent with the former provision which applied s. 72(1)(e)(iii) "whose annual wages immediately before the dismissal are more than \$71,200".

It was further submitted that in electing not to use this wording or a similar formula it is reasonable to conclude that the intention was to create a different outcome to that achieved by the previous version of s. 276(6).

However, this conflicts with what the Minister said in his Second Reading Speech (supra) that "these amendments do not involve any change to the policy position established in the Act last year".

There is no doubt that there is some tension between the words used. However, it is submitted by the respondent that the apparent use of the present tense "has" in ss (6) has no different effect from the apparent use of the present tense "the contract is" in ss (1). With that submission I respectfully agree. Sections 127A and 127C of the Federal *Industrial Relations Act 1988* were expressed in the present tense, e.g. "is unfair", "is harsh", "is against the public interest", "is binding", "is a party". It was held by the High Court in *Re Dinigan; Ex parte Wagner* (1994-1995) 183 CLR 323 that the power conferred by s. 127B to set aside or vary the terms of a contract can be exercised in relation to a contract that has been discharged. Gaudron J said (at p362) that the use of the present tense may be used descriptively or it may be used to signify contemporaneity. Her Honour also said that the use of the present tense in ss 127A and 127B was merely descriptive of the nature of the contracts rather than the use of a continuous or progressive present which indicates contemporaneity. Commissioner Bloomfield in *Minter v Q.T.U.* (1994) 146 QGIG 189 held that, notwithstanding the use of the term "is performed" as used in s. 39 of the *Industrial Relations Act 1990* the Commission had power to deal with a completed contract. I think it is useful to note that the *Industrial Relations Act 1990* and the *Industrial Relations Act 1999* (in the definition "unfair contract") both contain a provision which in part reads "provides, or **has provided**, a total remuneration". A similar provision was not in the Federal Legislation examined by the High Court, thus lending stronger support to the argument that the section applies to contracts which have ended. It is not in contention that the section applies to terminated contracts but it illustrates that words such as "the contract is" are unrelated to contemporaneity.

Thus it is my view that the word "has" should be read as descriptive of the nature of the remuneration rather than indicating contemporaneity in the same way that the words "the contract is" in ss (1) is to be read.

To hold otherwise would provide some curious results highlighted in the respondent's submission. An applicant in receipt of a wage in excess of \$71,200 could avoid the operation of the s. 276(6) exclusion by the simple act of resigning. Furthermore, while the contract remains in force, there exists no access to a remedy in respect of the contract for an employee earning more than the limit but such a right arises immediately the contract comes to an end, a result which surely was not intended for it has no logic. It gives greater rights to an employee whose employment has been terminated to one whose employment is still on foot. Moreover, if the applicant terminated the contract and immediately obtained other unrelated employment at a wage greater than \$71,200, no application could be brought in respect of the unfair contract, even if that contract had produced only negligible wages to the employee.

It was pointed out by the applicant in the submissions that s. 276 was remedial in nature (*Beahan v Bush Boake Allen Australia* (1999) 47 NSWLR 648), which legislation should be construed beneficially so as to give the fullest relief which the fair meaning of the language will allow (*Bull v Attorney-General for New South Wales* (1913) 17 CLR 370 at 384). In *Beahan*, the similar New South Wales provision of s. 109A excluded from the Unfair Contracts provisions of s. 106 a contract of employment for any reason for which:

"(a) an application has been or could have been made by the employee under Part 6 (Unfair dismissals), or

(b) such an application could have been made but for the provisions of section 83 that exclude the employee from making an application under that Part."

That the applicant had an annual remuneration of \$131,000 was not the point of the exercise. The Court was concerned with the distinction between unfair dismissal claims and unfair contracts, eventually holding that s. 109A excludes a contract of employment only where the unfair contract claim is an unfair dismissal claim in disguise and where essentially it is of the nature of an unfair dismissal. But the Court said:

"As a general proposition, our view in such a situation is that the language used in s. 109A should be strictly construed so as to remove from s. 106 only those contracts of employment which unambiguously fall within the exclusion provided by s. 109A."

However, as was stated in *Bull*, "this means ... not that the true signification of the provision should be strained or exceeded".

The situation as it existed before the amendment to s. 276(6) was that a person (not a public servant) "whose annual wages immediately before the dismissal are more than \$68,000" was excluded. Why not use the term "were" if that provision only related to contracts where an employee had been dismissed? Because it obviously does only relate to contracts where an employee has been dismissed, it is perhaps illustrative of the use of descriptive language rather than language denoting contemporaneity. No change was intended to that provision by the amendment and it is consistent with the use of "are" in that former provision that the Legislature has used the term "has" in the amendment. The use of the present tense "has" in my view is merely descriptive and not temporal denoting contemporaneity. Further, there would arise some rather curious results if the interpretation sought by the applicant be appropriate.

For these reasons, I am of the opinion that the interpretation sought by the respondent is correct and that the phrase "has an annual wage of more than \$68,000" must be taken to refer to the relevant contract sought to be declared unfair whether terminated or not. The result is that the applicant is excluded from the provisions of s. 276.

The application is struck out.

If there is to be an application for costs, it should be lodged within 14 days.

I order accordingly.

B.J. BLADES, Commissioner.

Released: 29 June 2001

Appearances:-

Mr G. Martin, Counsel, instructed by Blake Dawson Waldron, for the Applicant.

Mr A. Herbert, Counsel, instructed by Mr M. Osborne, Solicitor, McCullough Robertson, for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – unpaid wages

Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland AND Fast Signs & Displays Pty Ltd (No. W27 of 2001)

COMMISSIONER ASBURY

29 June 2001

Wages claim – Change in employment from weekly to casual – Change to casual employment agreed by applicant – Issue of correct award classification level – Entitlement to annual leave for period of weekly employment – No entitlement to payment of sick leave and public holidays not worked during period of casual employment – Payments for annual leave made by respondent in excess of award entitlement to be offset against obligation to pay annual leave – Application granted in respect of period of weekly employment.

DECISION

The Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (the AMEPKU), has made an application seeking an Order pursuant to s. 278 of the *Industrial Relations Act 1999* (the Act), that Fast Signs & Displays Pty Ltd (the respondent) pay unpaid wages to Mr Peter Watson (the applicant). The claim, which was amended during proceedings, is for an amount of \$10,559.45, together with interest. The amount claimed comprised \$5,725.35 for thirteen weeks of annual leave and leave loading; \$87.92 for non-payment of the Labour Day holiday in May 2000; \$175.84 for unpaid sick leave taken in 2000; and \$4,570.34 for underpayment of the award rate.

During the course of the hearing, the AMEPKU conceded that documentation produced by the respondent indicated that it had been the practice to close down the business for two weeks in December of each year, and that the applicant had been paid for this period. This information had not been apparent during the process of discovery preceding the hearing of the application, because the respondent had caused some information on photocopies of time and wages records produced to the AMWU, to be obscured. Accordingly, the AMEPKU sought leave to amend the application to reduce the amount of annual leave claimed, from thirteen weeks to seven weeks. The claim for annual leave loading for the entire thirteen week period, as well as the period when the applicant was employed under a traineeship agreement, was still pressed.

The facts associated with the claim can be briefly stated as follows:-

- The applicant was employed by the respondent from March 1997 until 30 June 2000;
- Neither the applicant or the respondent were able to provide any evidence of the actual date in March 1997 when the applicant commenced employment;
- The applicant was employed under the terms of the *Building Products, Manufacture and Minor Maintenance Award – State* (the Award);
- For the first twelve months of his employment the applicant was employed as a trainee under a traineeship agreement;
- The work performed by the applicant was the manufacture and installation of signs; and
- The applicant was not a tradesperson.

The AMEPKU for the applicant contended that the work performed by the applicant was that of an Assembler "A" as defined by the Award. The AMEPKU also contended that the applicant was employed on a weekly basis at all times and had not agreed to any change to casual employment. The AMEPKU submitted that there were no time and wages records to indicate the hours worked by the applicant on each day, or during each week. Further, the respondent had not supplied payslips to verify what was paid to the applicant or what payments related to.

It was stated for the respondent, that financial considerations had lead to a situation where payments to the applicant were not strictly in accordance with the respondent's obligations under the Award or relevant legislation. The respondent also contended that the fact that payments to the applicant were not strictly in accordance with the Award was discussed with the applicant and he had agreed to accept those payments. It was argued that the applicant had been provided with training, and maintained in employment, despite the financial difficulties being experienced, by the respondent, and the unsatisfactory work performance of the applicant.

The respondent also maintained that the basis of the applicant's employment had been changed from weekly to casual, with effect from 16 July 1999, and that the applicant had been paid the Award rate for a casual employee from that date. The respondent said that the applicant had accepted and agreed with this change, and that accordingly, the applicant had no entitlement to payment for annual leave, loading on annual leave, sick leave and public holidays not worked, from that date.

I accept that the financial situation of the respondent, was, and remains, extremely difficult. However, this is not a factor which can over-ride the respondent's obligation to pay wages and to provide employees with entitlements to leave, consistent with the Award. The fact that an employee may have agreed to accept wages and conditions of employment which are less than those contained in a relevant Award, is not a matter that the Commission can take into account, in the face of s. 135 of the Act, which provides that an Award prevails over a contract of service, to the extent of any inconsistency, unless the contract of service provides for more favourable conditions to the employee than the Award. The object of the Act as provided in s. 3 does not derogate from the specific provisions of s. 135.

This is not a case where it can be argued that the applicant received payment in excess of the Award, which can be offset against other Award entitlements. The evidence clearly establishes that the applicant has been underpaid in accordance with the provisions of the Award. The respondent also concedes that such an underpayment has occurred. Even if the respondent's contention that the applicant was a casual employee from 16 July 1999 is accepted, the evidence of the respondent clearly establishes that the applicant has been provided with only two weeks per annum of annual leave during the period of weekly employment, and no annual leave loading has been paid. The respondent also concedes that superannuation payments have not been made to the applicant.

The major issues for determination are:-

- Whether the applicant was a casual employee, within the meaning of the Award, from 16 July 1999; and
- Whether the applicant was required to perform the work of an Assembler "A" as defined in the Award.

In my view, there is clear evidence that agreement was reached between the respondent and the applicant, with effect from 16 July 1999, that the basis of the applicant's employment would change from permanent to casual. The applicant agreed during his evidence that Mr Kintzel, the Managing Director of the respondent, had said that the applicant was a casual employee "probably the last year I was there". The applicant said that Mr Kintzel had told him that there was not enough work, and that in some weeks his hours would need to be less than full-time. The applicant said that he had responded to this request by saying "yeah". After this discussion, there were a number of occasions when the applicant was provided with less than 38 hours work per week.

There is evidence that the rate being paid to the applicant increased with effect from 16 July 2000. Further, there is evidence that the respondent commenced to record the actual hours worked by the applicant from that date, to reflect that he was now being paid on an hourly basis. At the conclusion of his employment, the applicant left of his own volition, without giving notice to the respondent. No deduction was made from the applicant's termination pay by the respondent for failure to give notice. Although the applicant says that he did not understand that his employment status changed to casual employment on 16 July 1999, overall, I prefer the evidence of Mr Kintzel for the respondent on this point.

Further, there was no argument or evidence from the AMEPKU in relation to the definition of a casual employee in the Award, and that the applicant did not come within that definition. After considering all of the evidence and submissions, I am reasonably satisfied that the applicant was a casual employee from 16 July 1999.

The applicant was entitled to a total of 8 weeks annual leave for the period from March 1997 to March 1999, and a total of 20.5 hours of annual leave for the period from March 1999 to 16 July 1999, when he became a casual employee. During this period, the applicant was provided with 4 weeks of annual leave during Christmas closedowns, and three weeks of annual leave by agreement. Accordingly, the applicant has been underpaid in terms of his annual leave entitlement between March 1997 and 16 July 1999, by an amount of 58.5 hours of annual leave.

The applicant is entitled to annual leave loading for all annual leave during this period, being eight weeks from March 1997 to March 1999, and 20.5 hours from March 1999 to 16 July 1999. The applicant is also entitled to three public holidays falling within the periods of annual leave taken by him from March 1998 to March 1999.

The applicant is not entitled to payment for the Labour Day holiday in May 2000, or two days sick leave for 12 May and 5 June respectively, on the basis that he was a casual employee at the relevant time.

The respondent is entitled to offset the payment made to the applicant during the two weeks from December 1999 to January 2000, when the respondent's business was closed down. This payment was clearly made for annual leave, to which the applicant had no entitlement at that time, due to the fact that he was a casual employee. The respondent is entitled to offset this amount against all amounts owed to the applicant for annual leave and loading. This is consistent with the principle that set-offs must be restricted to payments which are referable, expressly or by implication, to the award obligation (see decision of the President in *The Haggarty Group Pty Ltd v Justin Wallace* (2001) 166 QGIG 417 at 420).

In the event that the amount paid for annual leave in December 1999 to January 2000 exceeds the outstanding amount of annual leave and loading owed by the respondent to the applicant, the respondent is not entitled to offset any excess amount against other amounts underpaid.

The evidence in relation to the work performed by the applicant is that he was engaged in assembling prepared pieces of material by gluing or fastening them together. There was also evidence that the applicant undertook measuring including the use of instruments for this purpose, and that the level of responsibility and initiative required of him increased from the second year of his employment. After considering the Award definition for an Assembler "A", and the evidence and submissions of the parties, I am reasonably satisfied, that the applicant was required to perform work as described in that definition, and is entitled to be paid accordingly.

To the extent that the respondent has failed to classify and pay the applicant as an Assembler "A" under the Award, the applicant has been underpaid. The quantum claimed by the AMEPKU in relation to this matter is \$4,570.34. This amount may require adjustment as a result of the finding that the applicant was a casual employee from 16 July 1999.

Further, on the basis of the findings in this decision, re-calculation of amounts underpaid in respect of annual leave, will be required. I also advised the respondent that in the event that I found for the applicant, the matter would be listed for further hearing if necessary, to enable submissions to be put regarding a suitable period of time for payments to be made to the applicant, given the financial difficulties being faced by the respondent. The AMEPKU also indicated that there would be no objection to the respondent being given such a period of time.

Accordingly, I make the following requests of the parties:-

1. Ms Patterson (or a representative of the AMEPKU) is to re-calculate the underpayments to the applicant in light of this decision, and to provide details to the respondent within seven days of the date of release of this decision.
2. Ms Patterson (or a representative of the AMEPKU) is to have discussions with the respondent within 14 days of the date of release of this decision, in relation to the amount of the claim following the re-calculation, and attempt to reach an agreement on a system of instalments to be paid to the applicant.
3. If the parties are unable to reach agreement in relation to the payment of outstanding amounts to the applicant, Ms Patterson (or a representative of AMEPKU) is to advise the Industrial Registrar, within 21 days of the date of release of this decision.

In the event that the Industrial Registrar is advised that the parties are unable to reach agreement pursuant to point 3 above, this application will be listed for further hearing for the purpose of determining these matters, and for the issuing of orders.

I.C. ASBURY, Commissioner.

Appearances:-

Ms H. Patterson, for the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland.

Released: 29 June 2001

Mr R. Kintzel and Mrs M. Kintzel on behalf of Fast Signs & Displays Pty Ltd.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Training and Employment Act 2000 – s. 231 – application for stay

Australia Meat Holdings Pty Limited AND Training Recognition Council (No. AT7 of 2001)

COMMISSIONER BLADES

29 June 2001

REPORT ON DECISION (as edited)

In giving a decision from the Bench on 28 June 2001, Commissioner Blades said:-

“This is an application under the provisions of s. 231 of the *Training and Employment Act 2000* (the Act) for a stay of a decision of the Training Recognition Council dated 29 May 2001 whereby the Council has not approved a request to cancel the training contract, on the grounds of abandonment of employment, of one Tony Arthur Keasey employed by Australia Meat Holdings Pty Ltd.

The Information Notice, admitted as Exhibit 1, does not specify under which section the order has been made. *Prima facie*, it would appear that there is no authority for an appeal to be lodged under s. 230 of the Act against a decision to not approve a request to cancel a training contract. The appeal is against the cancellation of the contract. Section 230(1)(e) refers to a decision about ‘the cancellation of a training contract for a reason other than serious misconduct’. This was not a decision to cancel. See also the Explanatory Notes which relate that clause 230 allows an aggrieved person to appeal ‘a decision by the Training Recognition Council to cancel an apprenticeship or traineeship contract for a reason other than misconduct’.

This was not such a decision.

A right to appeal is provided for in s. 230 (1) in respect of ‘(c) an order under s. 71’. What is an order under s. 71? Abandonment of employment is included in the term ‘misconduct’ in s. 70. Section 71 allows the Council to make various orders, one of which is an order cancelling the contract and other orders that may be made include reprimand, imposition of a monetary penalty, and suspension. The Explanatory Note provides that s. 230 allows a person aggrieved by specified decisions to appeal and one of those specified decisions relates to a decision under s. 71. The Note uses the following language ‘an order of the Training Recognition Council that imposes a disciplinary measure (i.e. impose a fine on or reprimand an employer or apprentice or trainee, cancel or suspend an apprenticeship or traineeship contract)’.

What was done in this instance does not fall within those provisions. No disciplinary measure was imposed.

What apparently occurred in this case was that the employer purported to unilaterally terminate the traineeship, something which it could not do. The employer is advised by various information sheets and the Act provides in s. 63 that cancellation cannot occur unless the Training Recognition Council approves the application.

Generally, a stay will be granted in circumstances where there is an arguable case for the granting of the appeal, and where the balance of convenience favours the making of the order.

The applicant must demonstrate an ‘arguable case’. In effect, this means that the appellant seeking the stay order must establish to the Commission’s satisfaction that, when the appellant’s appeal is heard, the appeal will have some chance of success.

In order to satisfy the ‘arguable case’ requirement, an appellant would need to specify at least some of the grounds upon which the appeal is based. The appellant has endeavoured to do so, not the least among which is an alleged breach of natural justice by the Training Recognition Council.

Of necessity, due to the urgency for a decision in this stay application where Mr Keasey is due to commence work tomorrow afternoon (Friday 29 June 2001), further argument and consideration may have been of benefit. However, upon the information that I have at the moment, it seems to me that the applicant/appellant may have some initial hurdles in pointing to a right to appeal. I emphasise that I do not make a final decision on that matter. It should be left to the hearing of the appeal.

What it does mean however is that I am not satisfied that the appellant has advanced an arguable case that the appeal will have some chance of success. To the contrary.

The applicant/appellant pointed to the prejudice it would suffer if an order for a stay was not made. That prejudice would be that it would be required to pay wages to the trainee and if the appeal was successful, those wages could not be recovered. On the other hand, the prejudice to the trainee was pointed to in that there is a significant difference between Social Security receipts and his wages. There is no doubt that an order for the payment of wages could be backdated if the appeal happened to be unsuccessful. However, there is also no doubt that the employer probably could well make good use of the trainee while the payment of wages continued. It would not be as though the payment was made for no return whatever.

I do not consider that there would be any real detriment to the employer if a stay order was not made and even if I am wrong about whether the appellant has an arguable case, I find some difficulty in finding that the appellant will suffer prejudice.

Moreover I note that s. 232 provides that the appeal is by way of rehearing but that fresh evidence may be admitted. That seems to mean that additional evidence may be given to that before the Training Recognition Council at the time the decision was made. There appears to be some factual disputes about some of the happenings and the introduction of the fresh evidence which the Training Recognition Council claims it has may very well mean that an appeal will not be successful, even if there were breaches of natural justice.

In all of the circumstances, I refuse the application for a stay.”.

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

Appearances:-
Ms J. Sharp for Australia Meat Holdings Pty Limited.
Mr R.G. Rigg for the Training Recognition Council.

Released: 29 June 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Phillip Moritz AND Sea World Gold Coast (No. B1334 of 2000)

COMMISSIONER BLADES

29 June 2001

REPORT ON DECISION (as edited)

In giving a decision from the Bench on 28 June 2001, Commissioner Blades said:-

“The Applicant seeks an adjournment of this trial *sine die* so that an application in the Anti-Discrimination tribunal may be pursued. I refuse that application and will issue further Directions Orders for the exchange of material and fix a further trial date for the reasons which follow.

There has been a breach of the Directions Order which required the Applicant to supply to the Respondent, and lodge in the Commission, statements of evidence from all witnesses which are to be relied upon in the hearing, by 4.00 p.m. on Friday 1 June 2001. The Applicant decided that he would not comply because he had decided to take his case to the Anti-Discrimination Commission. No party has a right to make such a decision.

If that is the course of action desired, then courtesy and commonsense alone require such an application to be made to the Commission for approval, whether the application be informal, i.e. where it is by consent, or formal, where it is opposed and certainly well before the trial date.

As Commissioner Fisher said in *Spaull v. Repalls Pty Ltd t/a LJ Hooker Surfers Paradise* (164 QGIG 129):-

‘Directions Orders are not issued as a guide or for the parties to elect whether or not they might comply at their convenience. They have a purpose in ensuring the orderly and timely conduct of litigation.’.

Rule 42 makes provision for dismissal action if Directions Orders are not followed and that should be borne in mind. In *Heffernan v. Metropolitan Housing Group* (160 QGIG 240) an order was made striking out a matter for failure to comply with the Directions Order.

The President, in dealing with a breach of Directions Orders, used strong language in *Seair Trading Company Pty Ltd v. Lewin, Thompson and Evans* (166 QGIG 448) where his Honour said:-

‘It is not a case of somnolence. It is a case of contumelious abuse of process. Every consideration going to preservation of the dignity of the Court and the integrity of its procedures suggests that the matter should be dismissed.’.

I think those remarks are relevant to proceedings in the Commission as well.

In this case the Applicant activated the Commission’s process against the Respondent until the Applicant was required to lodge witness statements. Then came a change of mind.

The Respondent objects, not to the adjournment, but to an adjournment *sine die* or until some date in the future when the Anti-Discrimination proceedings have been determined. There had to be an adjournment of today’s trial because there have been no statements at all filed by either party.

The basis of the objection is as follows.

The Applicant was employed on 5 June 2000 and dismissed on 1 August 2000. When he filed for unfair dismissal on 11 September 2000 on the grounds of discrimination, his application was already out of time.

The Applicant is covered by a Federal Certified Agreement, which raises a further complication. Two Conciliation Conferences have been held. It was not until very shortly before the six month time limit expired that an application was made to place this matter on the Call-Over list.

The Respondent, on 8 March 2001, was notified of a claim in the Human Rights and Equal Opportunities Commission lodged on 13 September 2000. It expended considerable sums of money compiling a Response, only to be told on 28 March 2001 that the application was not being pursued. It seems that the Human Rights and Equal Opportunities Commission explained to Sea World that the investigation of the Applicant’s complaint had been deferred because Mr Moritz advised initially that he was pursuing a claim against Sea World in the Queensland Industrial Relations Commission. However, Mr Moritz had now advised that he was no longer pursuing the claim in the Queensland Industrial Relations Commission. Obviously, this had changed by 28 March 2001.

It is clear that Mr Moritz has had great difficulty in making up his mind.

On 16 May 2001 Sea World received correspondence from the Anti-Discrimination Commission relating to a complaint made on 30 March 2001.

There is also the question of remedy. If the discrimination claim is rejected in the Anti-Discrimination Commission, the Applicant’s action in the Queensland Industrial Relations Commission cannot succeed. If compensation is awarded, it is likely to be much more than in this Commission.

There is a suggestion by the Applicant that he is seeking reinstatement. This matter will be 12 months old on 1 August 2001 and will be considerably older before any determination is made. The *Industrial Relations Act 1999* (the Act) provides for a 21 day time limit for lodging applications. The scheme of the Act appears to be for a timely determination of matters. Respondents should not be left in limbo at the convenience of Applicants. A Respondent is entitled to get on with its life. It is not fair that it should wait the convenience of an applicant who has a sudden change of mind shortly before a trial.

The Respondent points to another matter it had in the Anti-Discrimination Commission which took three years to determine. Even if this matter proceeds expeditiously, it will still be a considerable time before it is determined in the Anti-Discrimination Commission and the Respondent may then have to face another trial in this jurisdiction some time later.

The primary object of an application about unfair dismissal is reinstatement. That is still being sought. Such an application should be determined expeditiously. It is my view that this Applicant should either proceed with the matter in this Commission or withdraw, and if he fails to do either, an application to have the proceeding dismissed may find favour. I do not consider a guillotine order is appropriate just yet. The Applicant has stated that he will not withdraw.

If Mr Moritz proceeds with the Queensland Industrial Relations Commission matter, the Anti-discrimination jurisdiction is still available.

I intend to set further time limits for the exchange of documents and statements. A repeat breach of the Directions Order will probably result in this action being struck out.”.

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

Appearances:-
Mr J. Shepley, Counsel, instructed by Primrose Couper Cronin Rudkin, for the Applicant.
Mr A. Aspromourgos, of Livingstones (Australia), for the Respondent.

Released: 29 June 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

State Public Services Federation Queensland Union of Employees AND Queensland Corrective Services Commission and Another (No. B1092 of 1996)

QUEENSLAND CORRECTIVE SERVICES COMMISSION EMPLOYEES’ AWARD – STATE

COMMISSIONER BLOOMFIELD

25 June 2001

AMENDMENT (Correction of Error)

WHEREAS an error occurred in the amendment to the abovementioned Award as published in the *Queensland Government Industrial Gazette* of 20 September 1996, Vol. 153, No. 3, page 192, this Commission orders that the following correction be made and to be effective as from the fourth day of July, 1996:-

By deleting from item 2 (Schedule A) the amount of “\$29,691” from where it appears in L3 of the “Nursing Stream” and inserting the amount of “\$39,691” in lieu thereof.

Dated this twenty-fifth day of June, 2001.

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

Operative Date: 4 July 1996
Amendment – Correction of Error
Released: 28 June 2001

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QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 s. 482 – arrangement for conduct of elections

Association of Wall and Ceiling Industries Queensland – Union of Employers (No. Q24 of 2001)

REGISTRAR EWALD

3 July 2001

Conduct of Election – Prescribed Information – Timing of Election – Exercise of Discretion – Late Filing Allowed – Reason for Election – Method of Election

DECISION

On 29 June 2001 the Association of Wall and Ceiling Industries Queensland - Union of Employers lodged in the Registry under section 481 of the *Industrial Relations Act 1999*, the information as prescribed in section 36(1) of the *Industrial Relations Regulation 2000* in relation to its request for the conduct of an election by the Electoral Commission of Queensland for the following positions of Office.

<i>Office</i>	<i>Number of Positions</i>
<i>Council</i>	
President.....	1
Vice President.....	2
Treasurer.....	1
Councillor.....	5

Timing of Election

Rule 9.2.4 of the Industrial Organisation’s Rules prescribes “Notice that nominations for positions on the Council are being called, shall be sent by post to all Members not less than forty-two days prior to the date of the Annual General Meeting.”. The date for the Annual General Meeting will be fixed after the Organisation confers with the Electoral Commission regarding times for holding the election.

No clear opening of nominations for election date is prescribed by the Rules to assist in determining the prescribed date for the filing of prescribed information and, after reading all rules, a date is not definable by me. Therefore taking into account the indefinable time frame for this election for the purpose of lodgment of the prescribed information, I find I cannot determine under section 36(4) of the *Industrial Relations Regulation 2000* that the prescribed information was filed by the prescribed day (i.e. "2 months before the first day on which a person may become a candidate in an election under the organisation's or branch's rules.")

Notwithstanding that I am prepared to exercise my discretion and extend the prescribed time for filing such information to 29 June 2001.

Reason for Election

The Industrial Organisation advises that the terms of office for the Council Members expire annually in accordance with the Rules.

Method of Election

I am satisfied that the method of election is by a direct vote by secret postal ballot of the Members of the Association for Council as prescribed in Rule 9.2.6.

Conduct of Elections

I have considered the request, the Act and Rules and I am satisfied that an election is required to be held under the Rules for the Offices as set out above, by the method of election stated above. Therefore, under section 482, I am making arrangements for the conduct of the elections by the Electoral Commission of Queensland.

Dated this third day of July, 2001.

E. EWALD,
Industrial Registrar.

Released: 3 July 2001.

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QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 – s. 482 – arrangement for conduct of elections

The Bacon Factories' Union of Employees, Queensland (No. Q22 of 2001)

REGISTRAR EWALD

28 June 2001

Conduct of Election – Prescribed Information – Exercise of Discretion – Late Filing Allowed – Reasons for Election – Electoral Commission to Conduct Election.

DECISION

On 25 June 2001, The Bacon Factories' Union of Employees, Queensland lodged in the Registry under section 481 of the *Industrial Relations Act 1999*, the information as prescribed in section 36 of the *Industrial Relations Regulation 2000* in relation to the conduct of an election by the Electoral Commission of Queensland for the following positions of office:-

<i>Office</i>	<i>Number of Positions</i>	<i>Reason for Election</i>
General President	1	Casual Vacancy
State Councillor/Branch Secretary		
– Warwick Branch	1	Term Expired
– Canterbury Meats Branch	1	New Office created

Calling of Nominations

Rule 37(d) of the Industrial Organisation's Rules prescribes *inter alia* that State Councillors shall be elected by their respective Branches for a period of 2 years and that each Branch shall conduct its election at the expiry of the term of its sitting Councillor.

Rule 41(b) prescribes that not later than 28 days prior to the Annual General Meeting, each Branch shall conduct its election for Councillor.

The Annual General Meeting has been set for 14 September 2001.

Under the Rules there is no way for determining under section 36 of the Regulation "2 months before the first day on which a person may become a candidate in the election under the organisation's or branch's rules".

Taking into account the indefinable time frame for the calling of nominations for the purpose of lodgement of the prescribed information, I find that the prescribed information was filed outside the time frame prescribed by the Act. I am prepared to exercise my discretion and extend the prescribed time for filing of such information to 25 June 2001.

Conduct of Election

I have considered the application, the Act and Rules, and I am satisfied that an election is required to be held under the rules for the Offices as set out above.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election of the above named positions by the Electoral Commission of Queensland.

Dated this twenty-eighth day of June, 2001.

E. EWALD,
Industrial Registrar.

Released: 28 June 2001

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QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 – s. 482 – arrangement for conduct of elections

Queensland Teachers Union of Employees (No. Q23 of 2001)

REGISTRAR EWALD

28 June 2001

Request for Conduct of Election – Prescribed Information – Unfilled positions – Method of Election – Electoral Commission to Conduct Election.

DECISION

On 25 June 2001 the Queensland Teachers Union of Employees lodged in the Registry under s. 481 of the *Industrial Relations Act 1999*, the information prescribed in s. 36 of the *Industrial Relations Regulation 2000*, in relation to the conduct of elections by the Electoral Commission of Queensland for the following positions of office:-

Office	Number of Positions	Method of Election
Capricornia Area Council President.....	1	Collegiate vote by members of Area Council
Metropolitan East Area Council Vice President	1	
Metropolitan East Area Council Treasurer	1	
SunshineCoast Area Council Vice President	1	
SunshineCoast Area Council Treasurer	1	
Wide Bay Area Council Vice President.....	1	

Reason for Election

The Industrial Organisation advises that the above positions remain unfilled from the previous calling for nominations.

Timing of Election

I am advised that the next Journal is to be printed on 19 July 2001.

Method of Elections

I am satisfied that the method of election is as specified above.

Conduct of Elections

I have considered the request, the Act and Rules and I find that the elections being sought are for positions of office within the meaning of the Act and are required to be held under the Rules of the Industrial Organisation.

Therefore, under s. 482 of the *Industrial Relations Act 1999*, I am making arrangements for the elections of the above named positions to be conducted by the Electoral Commission of Queensland.

Dated this twenty-eighth day of June, 2001.

E. EWALD,
Industrial Registrar.

Released: 28 June 2001