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No. 24

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
CA322/01	Allied Pickfords Pty Ltd Gladstone and Queensland Country - Certified Agreement	9/8/01	CA82/99
CA327/01	Karuna Hospice Service Ltd - Certified Agreement 2001	9/8/01	
CA349/01	Port of Brisbane Corporation - Employees' - Certified Agreement 2001	16/8/01	CA492/99
CA350/01	Port of Brisbane Corporation - Brisbane Multimodal Terminal Employees' - Certified Agreement 2001	16/8/01	CA644/99
CA358/01	RSL (Qld) War Veterans' Homes Ltd, Employees of RSL (Qld) War Veterans' Homes Ltd, AWU, ALHMWU, QNU, QPSU and AMACS Interim - Certified Agreement 2001	16/8/01	
CA345/01	Doboy Cold Stores - Certified Agreement 2001	17/8/01	CA582/99
CA351/01	Caroma Industries Limited Northern Region Distribution - Certified Agreement 2001	17/8/01	CA179/99
CA352/01	Mad Dog Protection Services - Certified Agreement	17/8/01	

E. EWALD  
Industrial Registrar

INDUSTRIAL COURT OF QUEENSLAND

*Workplace Health and Safety Act 1995* – s. 164(3) – appeal against decision of industrial magistrate

**Francis Henry Charles Frazer AND Ronald David Gardner (No. C54 of 2001)**

PRESIDENT HALL

21 August 2001

DECISION

By s. 289 of the *Industrial Relations Act 1999* an Industrial Magistrates Court is a court of record. It is constituted by a magistrate sitting alone, s. 294. By s. 292 an Industrial Magistrate has jurisdiction (throughout the state) –

- (a) to exercise powers conferred on, or jurisdiction given to, magistrates by this Act or *another Act*; and
- (b) to hear and decide proceedings about the following matters –
  - (i) an offence against this Act for which –
    - (A) a maximum penalty of not more than 40 penalty units is prescribed, unless the offence is one for which this Act makes other provision; or
    - (B) jurisdiction is conferred on magistrates by this Act:
  - (ii) a claim for wages;
  - (iii) claims for damages suffered by an employee because of the employer neglecting to pay the employee's wages;
  - (iv) claims for damages for contravention of an agreement made under an industrial agreement;
  - (v) claims under chapter 11, part 2, division 2;
  - (vi) claims for compensation under section 83.

Amongst the other acts of the Queensland legislature which invests jurisdiction in the Industrial Magistrates Court is the *Workplace Health and Safety Act 1995*. Importantly, by s. 164(1) a prosecution for an offence against the Act "is by way of summary proceedings before an Industrial Magistrate.". This appeal arises out of such a prosecution. In the course of the prosecution the complainant sought to rely on s. 320 of the *Industrial Relations Act 1999* as a head of power pursuant to which the Industrial Magistrate might admit otherwise inadmissible evidence. Section 320 is in the following terms:–

- “**320.(1)** Subsections (2) and (3) do not apply to proceedings for –
- (a) the recovery of amounts, other than an amount ordered under section 278; or
  - (b) an offence against this Act.
- (2)** In proceedings, the commission or Industrial Magistrates Court –
- (a) is not bound by technicalities, legal forms or rules of evidence; and
  - (b) may inform itself on a matter it considers appropriate in the exercise of its jurisdiction.
- (3)** Also, the commission or Industrial Magistrates Court is to be governed in its decision by equity, good conscience and the substantial merits of the case having regard to the interest of –
- (a) the persons immediately concerned; and
  - (b) the community as a whole.
- (4)** In proceedings, the commission may admit evidence given before, and the findings of, the Anti-Discrimination Commission as evidence in the proceedings.
- (5)** In making a decision, the commission must consider the public interest, and to that end must consider –
- (a) the objects of this Act; and
  - (b) the likely effects of the commission's decision on the community, local community, economy, industry generally and the particular industry concerned.
- (6)** In exercising its jurisdiction, the commission must have appropriate regard to the rules.”.

The matter is not free from difficulty. The complainant legitimately relies heavily on the exclusion from s. 320 of “an offence against this Act”, see s. 320(1)(b). The submission is that proceedings for “an offence against another Act” are not excluded from the operation of s. 320. For myself, I consider it not to be a correct approach to commence with s. 320(1). In my view one should commence at s. 320(2) which indicates the scope of s. 320 rather than with the subsection which exempts some proceedings otherwise within its scope. It is difficult to treat the reference to “proceedings” in s. 320(2) as referring to anything other than proceedings under the *Industrial Relations Act 1999*. Given that the immediately preceding section, *viz* s. 319, defines “proceedings” to mean “proceedings under this Act or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the Registrar” and that the definition is not repeated at s. 320, one would have thought that a different meaning was intended. It was unnecessary to exclude prosecutions under the *Workplace Health and Safety Act 1995* from the operation of s. 320 because such prosecutions were not otherwise within the section.

There are broader considerations favouring the same outcome. The section heading, which is part of the Act, (s. 14(1) of the *Acts Interpretation Act 1954*) is “basis of decisions of the commission and magistrates”. One may legitimately wonder why the basis of a prosecution under the *Workplace Health and Safety Act 1995* would not be found in the objective of that Act at s. 7. One might equally wonder why those charged with offences attracting the relevantly modest penalties provided for in Chapter 13 of the *Industrial Relations Act 1999* should be shielded from relaxation of the rules of evidence whilst those charged with offences against s. 24 of the *Workplace Health and Safety Act 1995*, which provides (in some cases) for a maximum fine of 800 penalty units or 2 years' imprisonment in the case of natural persons, should be denied such a shield.

It may be accepted that the reference to the *Workplace Relations Act 1997* at s. 164(4) of the *Workplace Health and Safety Act 1995* should now be read as a reference to the *Industrial Relations Act 1999*, see s. 14H of the *Acts Interpretation Act 1954*. It is not possible to accept that the subsection, which provides:

“The *Workplace Relations Act 1997* applies, with any necessary changes, to a proceeding before an Industrial Magistrate brought under subsection 1 and to a proceeding on appeal before the industrial court brought under subsection 3.”

operates to make applicable to a prosecution under the *Workplace Health and Safety Act 1995* a provision of the (later) *Industrial Relations Act 1999* which was not intended to apply to such prosecutions. (No doubt is cast upon the application of Chapter 14 of the *Industrial Relations Act 1999* to a prosecution for an offence against the *Workplace Health and Safety Act 1995*.)

I dismiss the appeal.

I reserve the question of costs.

Dated this twenty-first day of August, 2001.

D.R. HALL, President.

*Appearances:-*

Mr M.J. Griffin SC and with him Mr S. Habermann for the appellant.

Released: 21 August 2001

Mr P. Roney instructed by Grevell & McLean, Solicitors for the respondent.

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#### INDUSTRIAL COURT OF QUEENSLAND

*Workplace Health and Safety Act 1995* – s. 164(3) – appeal against decision of industrial magistrate

**Christopher Keith Parr AND NQEA Australia Pty Ltd (No. C58 of 2001)**

PRESIDENT HALL

21 August 2001

#### DECISION

This is an appeal against a decision of an Industrial Magistrate ordering the complainant in a prosecution under the *Workplace Health and Safety Act 1995* to provide further and better particulars to the defendant.

In fairness to the appellant (complainant) it should be said that from the outset the appellant has made every endeavour to inform the respondent of the case which the appellant is to mount and of the evidence which he is to lead. Indeed, statements taken from witnesses who are not to be called have been (or will be) made available to the respondent. The shortcoming is that the material was discursive. The respondent was required to make judgements about exactly what case was to be made. The respondent was entitled to precise and pithy particulars. Ultimately, the respondent sought further and better particulars. They were provided. I should have thought that when the so-called “narrative particulars” of 24 April 2001 were read with the further and better particulars, all was pellucidly clear. However, in reliance on the simple proposition that a defendant is entitled to be told the case which it is to meet and not put in a position where it must determine the case which it is to meet, the respondent sought an order from the Industrial Magistrate requiring the appellant further to crystallise its case. The orders sought on the application to the Industrial Magistrate sufficiently appear from paragraph 4 of the written submissions handed to the Court. Paragraph 4 was in the following terms:-

“Read together, ss. 24 and 30(1)(a) of the Act require the prosecution at least to identify:

- (a) on whom the workplace health and safety obligation is said to fall – this has been done;
- (b) why that obligation is said to be imposed on that person – this has been done by the allegation that the defendant is a person in charge of a workplace;
- (c) the workplace health and safety obligation said to be imposed on the person so identified – this has been done in a general way by reference to s. 30(1)(a) of the Act;
- (d) the workplace concerned – this has not been done in a responsive way;
- (e) the risk (identifying the same) of injury (identifying the same) from the workplace so identified – this has not been done in a responsive way;
- (f) Insofar as either a Ministerial Notice or an advisory standard or industry code of practice has been made in relation to each and every risk so identified:
  - (i) in the case of any Ministerial Notice, and by reference to what is said to be the relevant part thereof, the manner in which it is alleged that the prescribed way was not followed;
  - (ii) in the case of an advisory standard or industry code of practice, and by reference to what is said to be the relevant part thereof, the way or ways in which each or any such standard or code of practice was not followed – this has not been done at all.”

Subparagraph (f) seems to me to go too far. The submission of Mr Griffin SC for the appellant that the appellant has been asked to particularise the law rather than the facts seems to me to be correct. A defendant is entitled to be clearly informed of the provision creating the offence charged but is not entitled to particulars of the elements of the offence, *Farrah v Gorrie and McKenna* [1954] ST.R.QD. 117 at 122. Second, subparagraph (f) seems to me to be directed at particularising the case which the respondent is required to make rather than the case which the appellant is to make. Section 37 of the *Workplace Health and Safety Act 1995* reverses the onus of proof. It requires:-

“37.(1) It is a defence in a proceeding against a person for a contravention of an obligation imposed on the person under division 2 or 3 for the person to prove –

- (a) if a regulation or ministerial notice has been made about the way to prevent or minimise exposure to a risk – that the person followed the way prescribed in the regulation or notice to prevent the contravention; or
  - (b) if an advisory standard or industry code of practice has been made stating a way or ways to manage exposure to a risk –
    - (i) that the person adopted and followed a stated way to prevent the contravention; or
    - (ii) that the person adopted and followed another way that managed exposure to the risk and took reasonable precautions and exercised proper diligence to prevent the contravention; or
  - (c) if no regulation, ministerial notice, advisory standard or industry code of practice has been made about exposure to a risk – that the person chose any appropriate way and took reasonable precautions and exercised proper diligence to prevent the contravention.
- (2) Also, it is a defence in a proceeding against a person for an offence against division 2 or 3 for the person to prove that the commission of the offence was due to causes over which the person had no control.
- (3) In this section, a reference to a regulation, ministerial notice, advisory standard or industry code of practice is a reference to the regulation, notice, standard or code of practice in force at the time of the contravention.”.

It is not a legitimate use of the power to order particulars to limit the burden case upon a defendant by s. 37 by, e.g. requiring the complainant to nominate why it was that the precautions taken by a defendant were not “reasonable precautions” within s. 37(1)(b)(ii), and requiring the defendant to do no more than meet that allegation of shortcoming.

As to subparagraphs (a) and (b), there was no basis for the making of an order. The appellant had already taken the steps referred to.

I am not at all sure that I would have made the Orders referred to at subparagraphs (c), (d) and (e). However, what was involved was a quintessential exercise of discretion by an Industrial Magistrate who is as much entitled as is the respondent to clear and crisp particulars. It is not appropriate to interfere with that aspect of the Industrial Magistrate’s decision.

It was for the above reasons that on 21 August 2001 I set aside the Orders of the Industrial Magistrate and in lieu thereof ordered:

“That by 4 p.m. on 22 August 2001 the appellant provide to the respondent further and better particulars of –

- (a) the workplace health and safety obligation said to be imposed on the person upon whom the obligation is said to fall;
- (b) the workplace concern; and
- (c) the risk (identifying the same) of injury (identifying the same) from the workplace so identified.”.

Whether s. 164(3) of the *Workplace Health and Safety Act 1995* authorises an appeal against interlocutory orders may be left to another day. Section 248(1)(e)(i) of the *Industrial Relations Act 1999* authorises the orders made on this appeal. I reserve the question of costs.

Dated this twenty-first day of August, 2001.

D.R. HALL, President.

*Appearances:*–  
 Mr M.J. Griffin SC and with him Mr S. Habermann for the appellant.  
 Mr J. Logan SC and with him Mr S. Horneman-Wren instructed by Morrow and Associates for the respondent.

Released: 21 August 2001

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INDUSTRIAL COURT OF QUEENSLAND

*Industrial Relations Act 1999* – s. 341(1) – appeal against decision of industrial commission

**Muhammad Alamzeb AND Education Queensland (No. C55 of 2001)  
 Education Queensland AND Muhammad Alamzeb (No. C56 of 2001)**

PRESIDENT HALL

21 August 2001

ORDER

By consent of the parties, the Court orders that the decision of the Industrial Relations Commission given on 26 July 2001 in case number B882 of 2000 be stayed, pending the outcome of the appeal in case numbers C55 of 2001 and C56 of 2001.

Dated this twenty-first day of August, 2001.

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

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INDUSTRIAL COURT OF QUEENSLAND

*WorkCover Queensland Act 1996* – s. 509 – appeal against decision of industrial magistrate

**WorkCover Queensland AND Shane Donald Zanoletti (No. 2) (No. C48 of 2001)**

PRESIDENT HALL

16 August 2001

DECISION

This decision is to be read with the decision in *WorkCover Queensland v Shane Donald Zanoletti (No. 1)* released on 10 August 2001.

On 8 September 1998 the respondent lodged an application for compensation under the *WorkCover Queensland Act 1996*. It is clear from the evidence that the application was for reporting purposes only. No compensation was paid. On 3 March 2000 the respondent sought to re-open the original WorkCover claim in order to recover his loss of wages and medical expenses. On 8 March 2000 the claim was rejected. The respondent sought a statutory review. By a letter dated 23 October 2000, the Review Officer advised the respondent that the decision of WorkCover Queensland had been confirmed. On 16 November 2000 the respondent appealed to the Industrial Magistrate at Innisfail.

The appeal was successful.

On the appeal to this Court WorkCover Queensland takes no issue with the decision of the Industrial Magistrate to reverse the decision of WorkCover Queensland and of the Statutory Review Officer that the claim for compensation should be rejected. However, additionally to allowing the appeal and making orders about costs (not the subject of this appeal) the Industrial Magistrate made an order in the following terms:-

“I order WorkCover Queensland to grant the appellant compensation on the basis of a 5% total disability.”.

Neither the original WorkCover decision nor the decision of the Statutory Review Officer had purported to assess Mr Zanoletti’s disability. Neither Mr Zanoletti nor WorkCover Queensland had asked the Industrial Magistrate to do so. At the simplest level, if the Industrial Magistrate had had jurisdiction to make the order about disability, I should have allowed the appeal on the basis that, the matter of disability being one upon which evidence might well be material, it was a denial of natural justice to determine the matter without notice to the parties and without allowing the parties the opportunity to call evidence. The matter goes further than that. The scheme of Parts 1-3 of Chapter 9 of the *WorkCover Queensland Act 1996* is to channel complaints about certain decisions made by WorkCover Queensland through an internal review system with a further right of appeal (by way of hearing *de novo*) to the Industrial Magistrates Court and a final appeal (by re-hearing) to this Court. A decision by WorkCover about disability is not one of the decisions within that scheme. There is a reason for that. Where a person refuses to accept WorkCover’s assessment of the person’s impairment, the matter is referred to a medical tribunal (see ss. 437, 441 and 442) for assessment. The assessment is final and cannot be questioned in a proceeding before a tribunal or a court, s. 456. It simply was not the intention of the legislature that an issue about disability should be decided by the Industrial Magistrates Court.

I allow the appeal. I set aside the decision of the Industrial Magistrate ordering WorkCover Queensland to grant the appellant compensation on the basis of a 5% total disability.

Dated this sixteenth day of August, 2001.

D.R. HALL, President.

*Appearances:-*

Mr B. Thomas instructed by WorkCover Queensland for the applicant.

Released: 16 August 2001

Mr M. Pope instructed by Bruce K Gillan, Solicitor, for the respondent.

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#### QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

#### **Michael Stone AND Stylesetter Office National (Case No. B228 of 2001)**

COMMISSIONER ASBURY

16 August 2001

Termination of employment – Finding that applicant was unfairly dismissed – Finding that reinstatement or re-employment impracticable – Further evidence required to determine amount of compensation to be awarded – Further evidence provided by applicant in affidavit – Respondent declines opportunity to cross-examine applicant about contents of affidavit – Compensation awarded.

#### DECISION

In a decision released on 20 July 2001, I found that Mr Michael Stone (the applicant) had been unfairly dismissed, and that the remedies of reinstatement or re-employment were impracticable. I also found that insufficient evidence had been called by the applicant in relation to non-refundable remuneration received in the period following his dismissal, to enable compensation to be calculated. Accordingly, within 14 days of the date of this decision, the applicant was directed to file in the Commission and serve on the respondent, an affidavit containing information upon which an assessment of compensation could be made.

Within 7 days of the receipt of the applicant’s affidavit, the respondent was directed to advise the Commission in writing, of whether or not cross-examination of the applicant in relation to the contents of the affidavit was required. By facsimile dated 11 August 2001, Mr McDuff on behalf of the respondent has advised that he does not need to cross-examine the applicant, in relation to the contents of the affidavit.

This decision relates to the amount of compensation to be awarded to the applicant. In *Griggs v Health Equipment Hire and Supplies Pty Ltd* (1995) 149 QGIG 131 at 134, Bougoure C said:-

“It seems to me that any award should be to compensate the employee for the loss caused by the dismissal and should not be to punish the employer for its wrongdoing. Furthermore, it seems to me that compensation should not be recovered if the loss suffered by the employee is too remote i.e. if it does not arise as a consequence of the dismissal. The assessment of future loss would also involve the consideration of a number of contingencies, including whether the employee would have left the job voluntarily or would have been forced to retire early.”.

In a significant number of cases this Commission has formulated compensation according to the factors identified in *Chenery v Klemzig Nursing Home* (1988) 55 SAIR 54 and the global approach laid down in that decision, of considering those factors which are relevant to the particular circumstances of each case.

In this case, I have decided to award the applicant the amount of \$9,000 as compensation for his unfair dismissal. This is a global sum, which I have arrived at after considering factors which include:-

- the considerable experience and expertise of the applicant as a salesperson;

- the fact that the applicant left secure employment to work for the respondent;
- the loss by the applicant of the ability to qualify for leave;
- the applicant's salary package and his financial commitments arising from the car allowance component of that package; and
- the length of time which is likely to elapse before the applicant obtains other employment, which I am told by the applicant is likely to be considerable, given the economic conditions prevailing in the Bundaberg region.

Counterbalancing these factors is the relatively short period of employment that the applicant had with the respondent.

Further, I have taken into account my view that the prospects of the applicant's employment continuing for a lengthy period of time were minimal. The respondent had problems with the flexibility which had previously been afforded to the applicant and was planning to remove that flexibility. There is every indication that the applicant would not have taken kindly to this change, and that the employment relationship would have soured as a result. The evidence clearly establishes that the applicant's behaviour at the meeting of 30 January 2001 contributed to the position in which he found himself. The applicant also stated in his evidence that the respondent's business was not doing well and submitted that the evidence of Mr Taylor for the respondent demonstrated that the respondent could not afford to employ him. This is contrary to the applicant's claim that he had a reasonable expectation that his job was secure.

The applicant advanced an argument to the effect that he was inappropriately influenced by the respondent to purchase a \$72,000 Holden motor vehicle, utilising a car allowance provided as part of his salary package. In the decision of 20 July 2001, I found that there was nothing inappropriate in the conduct of Mr McDuff with respect to the purchase by the applicant of the motor vehicle, and that the decision to purchase the vehicle was made freely by the applicant. I am satisfied that financial loss associated with the purchase of the motor vehicle in question, is too remote from the dismissal of the applicant to constitute a significant factor in the calculation of compensation. However, the compensation I have awarded includes a component for the vehicle allowance, which was part of the applicant's salary package.

The applicant has received a total of \$3,724.89 in unemployment benefits, commencing on 14 February 2001, some two weeks after his dismissal, up until the conclusion of the hearing into his unfair dismissal application. Further, the applicant has earned a total of \$994.50 from other employment since his dismissal. I have brought those payments into account in the calculation of the compensation (*Lucas v Steven Paul Lather trading as Radcliffe, Lather and Buckland and Another* (1996) 153 QGIG 1542 at 1543).

I order that Stylesetter Office National (ACN 070 085 746) pay to the applicant, Michael Stone, the amount of \$9,000 within 21 days from the date of this decision.

I.C. ASBURY, Commissioner.

*Appearances:-*

Mr M. Stone, the Applicant, on his own behalf.

Mr T. McDuff, the Respondent on his own behalf.

Released: 16 August 2001

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#### QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Peter Gordon Hawke AND Charleson Staff Pty Ltd (No. B1542 of 2000)**

COMMISSIONER SWAN

20 August 2001

Extension of time application – Application for reinstatement – Challenge to *bona fides* of reinstatement claim – Essentially a wages claim – Conference certificate issued (pursuant to s. 75(3) *Industrial Relations Act 1999* – Applicants status of employment in contention with employer – Quantum sought outside jurisdiction in reinstatement claims under *Industrial Relations Act 1999* – Unpaid wages claim put to employer – Employer rejected claim – Lengthy delay in reinstatement application – Explanation for delay unacceptable – No serious disadvantage to applicant – Applicant is within time to pursue a wages claim – Extension of time application dismissed.

#### DECISION

This is an Extension of Time application made by Peter Hawke who seeks to have a reinstatement hearing conducted before the Commission between himself and Charleson Staff Pty Ltd. At this hearing, solicitors for the employer stated that the correct Company name of the employer is Charleson Staff Pty Ltd rather than Whitemarsh Pty Ltd as was originally claimed. This statement was accepted by the applicant as being correct and the claim was amended accordingly.

This matter has a convoluted history. This is in part due to the fact that both parties have been represented by different persons at various times. For the purpose of this application, Mr D Simmons (Advocate for The Workplace Advocate) is representing Mr Hawke, and Primrose Couper Cronin Rudkin, Solicitors, are representing the employer.

The original application for reinstatement was filed with the Commission on 17 October 2000. A compulsory conference was held on 28 November 2000 and a Certificate (pursuant to s. 75(3) of the *Industrial Relations Act 1999* (the Act)) issued on 2 April 2001.

On 15 August 2000, French Commercial Lawyers (acting for Mr Hawke at that time) wrote to Messrs Attwood Marshall, Lawyers (representing the employer at that time) claiming that the company "had not used his (i.e. Mr Hawke's) services for the past several weeks, but had not given him notice or any of his entitlements."

On 4 September 2000 the employer's solicitors wrote to the applicant's solicitors in response to their letter stating that the applicant had abandoned his employment. The applicant claims to have no knowledge of the existence of this letter.

On 15 February 2001, The Workplace Advocate wrote to Messrs Attwood Marshall, Solicitors setting out a claim for unpaid wages and entitlements amounting to \$65,433.00. It is clear from this letter that the basis for any settlement at that time centred upon the resolution of what was essentially a "wages claim". This claim, apparently, was rejected by the employer.

In March 2001, the applicant sought a date for hearing of the reinstatement application. Some short time later, the s. 75 Certificate issued from the Commission.

The Solicitors for the employer now state:-

"Mr Hawke's interest in the Reinstatement Application was then revived in or about late March when it would appear that he requested a date for hearing of the Application, resulting in the issue of the section 75 certificate on 2 April 2001 – more than 8 months after the relevant events occurred; more than 5 months after the proceedings were commenced; about 4 months after the conciliation conference, and some 6 weeks after a demand for unpaid wages completely outside the jurisdiction of the QIRC.

And at no time, until now, more than 9 months after the relevant events and some 7 months after commencing proceedings, had Mr Hawke even addressed the point of attempting to bring his Application within the unfair dismissal jurisdiction, by seeking an extension of time within which to make the Application.

The overall delays are considerable, having regard to the authorities. If, as is alleged by Mr Hawke, his employer acted on 9 August in such a way as to lead him to believe that "he was in fact losing his job", he should have filed the application within the next 21 days i.e. by 31 August. Instead, without any explanation to date, he waited another 47 days, until 17 October, despite in the meantime having had the benefit of legal advice."

What needs to be mentioned at this point is that both parties advised the Commission that they would not be calling witnesses during this hearing and that they had reached an agreement that the Commission should simply weigh the submissions of each party. Given the contested facts between the parties, this approach has proved somewhat problematic but not to the degree that it has affected the making of a fair decision.

The representative for the applicant states that his client had worked for the employer for some three years and nine months. During that time it is claimed that the applicant was "paid under various *ad hoc* arrangements until the week ending 9.5.97. From this point his basic rate was \$18.50 per hour."

On 9 August 2000 it is claimed that Mr Hawke presented himself for work but was told that he was to work as a Relieving Plant Operator – a move Mr Hawke viewed as a demotion. Mr Hawke believed that he was losing his job and made attempts to clarify the situation with the employer, but, from his perspective, to no avail. The applicant claims that he was offered no more work with the employer from that day. He states that he was never told that he was dismissed, but rather that he had been demoted. He also claims that he was not given a Separation Certificate. Consequently, upon ceasing to perform actual work for the employer, Mr Hawke did not receive any notice provisions applicable under the Legislation.

From the employer's perspective, Mr Hawke was engaged initially as a contract plant operator around November 1996 until mid 1997.

On 5 April 1997, Mr Hawke had made an employment declaration regarding his employment with Whitemarsh Pty Ltd declaring, amongst other things, that his basis of employment with that company was as a "casual". The documentation supporting this claim was tendered to the Commission and accepted as factual by the applicant. The applicant states that prior to 2 August 2000 he had been working approximately 50 hours per week and was being paid a "set amount" per week of \$550.

In Mr Hawke's application for reinstatement, he states initially that:-

"On 9 August 2000 Mr Hawke was advised by his supervisor that he was being made Relieving Plant Operator. He protested (presumably upon that date) that he believed he was in fact losing his job. He has not been allocated any work since 9 August 2000; and He believes that his dismissal was harsh, unjust and unreasonable."

The applicant, appropriately, applies the guidelines enunciated in the decision of Chief Industrial Commissioner Hall (as he then was) in *Breust v Qantas Airways Ltd* (1995) QGIG 777 and later expanded upon in subsequent cases in pursuing his request to be granted an extension of time.

The essence of the applicant's claim is as follows:-

In order to satisfy the Commission that both the length of the delay and the reasons behind it are explainable, the applicant claims that both matters lay within the control of the employer. This is so because the applicant states that he was unable to determine when he was actually dismissed. On 9 August 2000, the applicant was told in a telephone conversation by the Manager that he was to become a Relieving Plant Operator. At that time, no further work was offered to the applicant. On 15 August 2000, the applicant's solicitors contacted the employer in order to clarify the situation but their written request was unanswered. The applicant's adviser states that sometime during early 2001 he had been advised by representatives for the employer that a letter had been sent on 4 September 2000 to the applicant stating that the employee had abandoned his employment on 2 August 2000 and that the employer had regarded this situation as a resignation of employment. The applicant denies ever receiving this letter.

From the employer's perspective, it is claimed that there had been a series of complaints made about the manner in which the applicant had performed his work with clients of the employer, that the applicant was a casual employee and that there was a general downturn in business and other machine operators had also lost their jobs. The employer elaborated upon the first point by stating that because of complaints made against the applicant, it was unable to offer the applicant any more work. Notwithstanding these submissions, the applicant did not, in a formal sense, receive any monetary payment from the employer upon being offered no further work. The employer states that it would not have been bound to do so given the applicant's employment status as a casual, but the applicant states that, were one to consider the regular nature of his work and the hours worked per week, he was not a casual employee but rather a permanent full-time employee. It would seem, on the material put before me that, whilst the applicant may have been termed a casual employee, the rate of pay he received for the alleged hours worked do not suggest a casual employment engagement (nor perhaps does it suggest the appropriate rate of pay for a full time employee) and herein may lie the real basis of the applicant's complaint.

The period of time in question from cessation of employment to the lodgement of an application for reinstatement is approximately 47 days. From the applicant's perspective, the time period in question is considerably less but difficult to quantify for reasons earlier cited. It would seem to me, in light of these considerations and given the correspondence which has been tendered (i.e. the letter from French Commercial Lawyers dated August 2000 to the employer and the letter from Attwood Marshall Lawyers dated 4 September 2000 to the applicant), that the prospect of discovering what had actually occurred with the applicant's employment was initially problematic. However, given that the applicant was legally represented soon after the events of 9 August 2000, it weighs against the applicant that the application for unlawful dismissal took such a long period of time to be lodged. It seems to me, from considering the content of the letter dated 15 August 2000 previously cited, that the applicant was more interested in pursuing a wages claim rather than a claim for unlawful dismissal and as such the time period within which to lodge a reinstatement application was let pass without event.

It can be argued, after a full consideration of all of the material, that the applicant may have been confused as to his employment status immediately around 9 August 2000, but given that he states that he was not offered any further work, it is reasonable to presume that, after having worked on a continual basis for a lengthy period of time, it would be odd if he continued to hold the belief that he still retained a position with the employer of any description. Certainly, at some time during the 47 day delay, between himself and his legal adviser, the prospect of termination must have been considered.

With these factors in mind, I am unable to find that the applicant had an acceptable explanation for the delay incurred in lodging his reinstatement claim. The period of delay was, in these circumstances, unacceptable.

The employer complains, justifiably so in my view, that notwithstanding the requirements of s. 74(2)(b) of the Act, the applicant has been dilatory in proceeding with his claim and, at the date of this hearing, the matter remained in dispute some 9 months later. In my view, this is a factor which can be addressed when considering any prejudice which might attach to the employer were the matter to proceed. As well, there is merit in the employer's submission that the applicant's desire to pursue a reinstatement claim was not *bona fide* in that an extensive period of time had elapsed before the applicant ever sought to take the initial step of applying for an extension of time in which to pursue his claim.

As earlier stated, it is evident from documentation tendered by the applicant's adviser that his client, at least for a considerable period of time, was only focussed upon pursuing a wages claim against the applicant rather than a claim for reinstatement.

On the question of prejudice which might attach to one or other of the parties were the matter to proceed, I would state as follows:-

For the employer, it states, and I accept, that it has, as a matter of fact and around the time in question, terminated the services of a number of employees from its workplace because of a downturn within the industry. As well, it states that some of its clients have refused to work with the applicant. There has been considerable documentation presented to the Commission by clients of the employer and other employees of the company detailing difficulties associated with the applicant in terms of his demeanour and attitude towards a range of persons. Because those allegations are untested, they do not form part of the reasoning behind my decision. There is also the question of a belief held by the employer that the claim being made by the applicant is essentially a wages claim, and therefore one which should be heard under a different section of the legislation. The employer also states that it has been extremely difficult for it to present a defence to the claim because of the paucity of information contained within the applicant's claim lodged with the Commission. On the material before me, that claim is sustainable. It would seem to me, on the uncontested facts, that there would be a significant degree of prejudice suffered by the employer were the matter to proceed.

The advocate for the applicant, in response to questions from the Bench, stated that it was his client's intention to challenge his dismissal on the basis that it was harsh and unfair. I have considered that submission but it seems to me, from a consideration of the documentation put before me, that the applicant's primary concern relates to the question of payment of alleged outstanding monetary entitlements. In effect, a wages claim. This in itself does not prohibit the applicant from making his application for reinstatement but it does raise the question of the genuineness of his reinstatement claim as such. During early 2001, the applicant's adviser wrote to the employer's solicitors stating *inter alia*:-

"I have looked carefully at the file and would consider that this is at the very least a constructive dismissal and that there is also a large amount of arrears in wages, super payments and workcover payments that need to be addressed. Taking this into account it is my belief that Mr Hawke may be entitled to an amount considerably in excess of what the original claim came to. We will be seeking recovery of unpaid wages and overtime as well as this trial."

From this, it is taken that the amount sought exceeds the original amount claimed of \$65,000. A consideration of relief equating to that level of quantum would be outside of the Commission's jurisdiction in a reinstatement claim because of the monetary limits set by the Legislation. There is a strong argument that this claim is misplaced.

The documentation provided in this case highlights the following:-

The applicant had signed an employment declaration form showing that he was a "casual" employee.

That the applicant had lodged a reinstatement application containing limited information upon which the employer could mount an appropriate defence.

That the applicant had made a specific claim of some \$65,000 in back wages against the employer - in that claim there had been no mention of an unfair dismissal claim. In subsequent communication with the employer, the applicant's adviser states that the amount ultimately claimed may well exceed that figure.

That there had been a downturn in the industry.

Provided within the documentation were signed, but not sworn statements from employees and clients of the Company. All that I can take from this is that I am conscious of the fact that the employer could provide a significant number of witnesses, both employees of the Company and clients of the Company, who would give evidence against the applicant. It is unknown to me, at this stage, whether the full content of the applicant's claim has been put before me at this hearing. Of course, there was no requirement for this to occur and in fairness, I can take that point no further.

Against this background, I would find as follows:-

While I accept that confusion existed around the applicant's work status at the time of cessation of work, on no other ground, against the guidelines as expressed in *Breust*, would I find in favour of the applicant's submissions. Section 74(2)(b) of the Act vests a discretion in the Commission to determine this matter, and from my perspective, after a consideration of all of the facts, I would find against the applicant.

The applicant is within time to lodge a claim for alleged lost wages. To that degree, the major part of his claim, which I see as a wages claim, can be addressed before the Commission. Within that context, he is not prejudiced by my findings in this case.

I would dismiss the application.

Order accordingly.

D.A. SWAN, Commissioner.

Released: 21 August 2001

*Appearances:-*

Mr D. Simmons, of The Workplace Advocate, for the applicant.

Mr A. Tobin, Primrose Couper Cronin Rudkin, for the respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 - s. 329(b)(iv) - parties to be joined or struck out*

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees AND  
Smalley Pty Ltd and Chubb Security Pty Ltd (No B1107 of 2001)**

## ORDER

FURTHER to the hearing of this matter before the Commission at Brisbane on Thursday 19 July 2001, IT IS ORDERED *by consent* that the Second Respondent, Chubb Security Pty Ltd, be struck out as a party to the proceedings.

Dated this twenty-first day of August, 2001.

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

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 156 – certifying an agreement

**Skills Training Mackay – Certified Agreement 2001 (CA323 of 2001)**

COMMISSIONER ASBURY

21 August 2001

Certification of agreement – Bargaining Agents Fee – Concerns in relation to operation of clause in light of s. 394 Contract not to stipulate mode of spending wages – Concerns in relation to whether clause inconsistent with Chapter 4 Freedom of Association – Approval of Commissioner Administrator sought to refer application to a full bench pursuant to s. 281.

STATEMENT

By application made on 12 July 2001, The Australian Workers' Union of Employees, Queensland (the AWU) and Skills Training Mackay seek certification of the *Skills Training Mackay – Certified Agreement 2001* (the proposed agreement) under Chapter 6 Part 1 of the *Industrial Relations Act 1999* (the Queensland Act).

At a hearing on 31 July 2001, I advised the AWU that I had some concerns about clause 1.8(3) of the agreement, which provides as follows:–

**“Bargaining Agents Fee**

The Company shall advise all employees prior to commencing work for the company that a “Bargaining Agents” fee of 1% of the employees gross annual income or \$500 per annum whichever is the greater is payable to the Australian Workers Union on or prior to the (sic) 1 April each year.

The relevant employee to which this clause shall apply shall pay the “Bargaining Agents Fee” to the Australian Workers Union in advance on a pro-rata basis for any time which the employee is employed by the Company. By arrangement with the Australian Workers Union this can be done in two instalments throughout the Year.

The Company shall advise all employees that a Bargaining Agents fee of one percent of the employees’ gross annual income or \$500 per annum whichever is the greater, is payable to the Australian Workers Union on or prior to 1 April each year.

In the case of a new employee, the Company shall advise of the abovementioned condition prior to that employee commencing work for the Company.”.

At that time, my concerns related to the interaction of clause 1.8(3) of the agreement and s. 394 of the Act which provides as follows:–

**“Contract not to stipulate mode of spending wages**

394.(1) Subject to this division, an employer is not, directly or indirectly, to impose as a condition, express or implied, of an employee’s employment, a provision about the place where, way in which, or person with whom an employee’s wages, or a part of the wages, are to be spent.

Maximum penalty – 16 penalty units.

(2) An employer must not dismiss an employee because the employee’s wages, or part of the wages, are spent, or not spent, at a place, in a way, or with a person.”.

Section 73(2)(j) also provides that a dismissal is for an invalid reason, if it is for a reason mentioned in s. 394(2).

The parties to the agreement were requested to file written submissions in relation to the possible impact of s. 394 on the certification of the agreement. A submission has been filed by the AWU in relation to this point. Having given some consideration to that submission, the following additional questions in relation to the operation of clause 1.8(3) of the agreement arise:–

- Is the proposed clause intended to apply only to new employees, or does the last paragraph of the clause indicate the intention of the parties that the clause will apply to existing employees?
- Would the Company deduct the bargaining agents fee from the wages of an employee bound by the agreement?
- Does the proposed clause enable the bargaining agent’s fee to be deducted from the wages of an employee bound by the agreement, on the basis that it is a deduction authorised by an industrial instrument, pursuant to s. 391(1) of the Act?
- What action would be taken, if any, by the Company or the AWU if an employee bound by the clause refused to pay the bargaining agent’s fee or to have the fee deducted from his or her wages?

I have also identified a number of other issues relevant to whether the agreement in its current form can be certified. Section 157(1)(a)(iii) of the Act provides that the Commission must refuse to certify an agreement if it considers that a provision of the agreement is inconsistent with a provision of Chapter 4 of the Act (Freedom of association). In *Accurate Factory Maintenance Labour Hire Enterprise Agreement and other agreements* (C2001/1244) Vice President McIntyre of the Australian Industrial Relations Commission considered an application by the Employment Advocate, to remove a provision from a number of certified agreements, which is in substantially the same terms to the provision which I am considering, on the basis that such provisions were objectionable, pursuant to s. 298Z of the *Workplace Relations Act 1996* (the Federal Act).

Vice President McIntyre rejected the application, making the following findings:-

“In my view, subclause 14.3 requires or permits (etc.) conduct by the employer of at least one of the types described in s. 298K(1). Subclause 14.3 has to be read in context, not in isolation. Subclause 1.3, as earlier noted, provides that the terms and conditions of the agreements shall be a condition of employment. This, in my view, means among other things, that, if an employee failed to pay the fee to the ETU, he or she would be in breach of his or her obligation to the employer and, accordingly, the employer would be entitled to take such disciplinary action against the employee as it was legally available to it. In these circumstances, it is my view that subclause 14.3 requires or permits the employer to take action against an employee who fails to pay the fee to the ETU; for instance, by dismissing the employee or altering the position of the employee to the employee’s prejudice. Such actions are conduct of the type described in at least one of the paragraphs of s. 298K(1).

...

In my view the conduct (which I have earlier found requires or permits (etc) conduct by the employer of at least one of the types described in s. 298K(1)) is not carried out for the prohibited reason relied on by the applicant or for reasons that include that prohibited reason. (The prohibited reason relied on by the applicant was, as stated earlier, the reason specified in s. 298L(1)(b) – *is not, or does not propose to become, a member of an industrial association.*)”.

It should be noted that s. 298K(1) of the Federal Act, is in essentially the same terms as s. 105 of the Queensland Act. While there are some similarities between s. 298L of the Federal Act and s. 104 of the Queensland Act, there is a significant difference, which in my view may be relevant to the consideration of the provision which is contained in the agreement which I am being asked to certify. Section 298L(c) of the Federal Act, provides that conduct referred to in s. 298K is for a prohibited reason, if it is carried out because the employee, independent contractor or person concerned:-

“(c) in the case of a refusal to engage another person as an independent contractor:

- (i) has one or more employees who are not, or do not propose to become, members of an industrial association; or
- (ii) has not paid, or does not propose to pay, a fee (however described) to an industrial association; ...”.

Vice President McIntyre did not deal with s. 298L(c) in the case he was considering, as it was not argued that there was a refusal to engage another person as an independent contractor. The decision of Vice President McIntyre, is currently under appeal, and the full bench determining the appeal (Giudice P; Kaufman SDP and Whelan C) issued a statement on 15 June 2001 (PR905312), requesting the parties to address the issue of whether the clause in question complies with the requirement of s. 170LI of the Federal Act, that an agreement be about matters pertaining to the relationship between an employer and its employees.

The provision in the Queensland Act dealing with refusal to pay a fee to an industrial association, is found in s. 104(1)(c), which provides as follows:-

“(1)For this chapter, a person engages in conduct for a ‘**prohibited reason**’ if the person engages in, or threatens to engage in, the conduct because another person –

...

(c) has not paid, or does not propose to pay, a fee, however called, to an industrial association; ...”.

In my view, there is a *prima facie* argument that clause 1.8(3) of the agreement I am being requested to certify, is inconsistent with a provision of chapter 4 of the Act. I have not reached a conclusion in relation to this matter, and I am not prepared to do so in the absence of more detailed submissions from the parties to the agreement, who to date have not been provided with an opportunity to make such submissions.

I am aware that similar clauses to the one I am considering, are being proposed in a number of other agreements currently being negotiated. I am not aware that a provision in similar terms has been included in an agreement certified by a member of this Commission.

I am of the view that the questions I have identified above, are likely to raise issues of substantial industrial significance, and warrant consideration by a Full Bench. Accordingly, I have decided to seek the approval of the Commissioner Administrator, pursuant to s. 281 of the Act, to refer the matter of the certification of the *Skills Training Mackay – Certified Agreement 2001* (CA323 of 2001) to a Full Bench.

I am unable to seek only to refer the clause about which I have concerns to a Full Bench and otherwise certify the agreement. The entire application must be referred to the Full Bench: *Printing Trade – the Gympie Times Pty Limited Certified Agreement (CA567 and 568 of 1998)* (1999) 160 QGIG 323.

I.C. ASBURY, Commissioner.

*Appearances:-*

Mr J. Sharpe, for The Australian Workers’ Union of Employees, Queensland.

Released: 22 August 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999*

**TAFE TEACHERS’ AWARD – STATE**

**(Gazette, 14th March 1991)**

AMENDMENT  
(Replacement)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 15 December 2000, Vol. 165, No. 20, pages 783 – 784, the following Amendment shall replace the aforementioned Amendment as from the first day of September, 1999:-

1. In clause 3.3 (Salaries) –

(a) by deleting subclause 1(a) and inserting the following in lieu thereof:-

“(1) *Tutors* – (a) The following scale of minimum salaries shall apply to Tutors:-

	Per Fortnight \$	Per Annum \$
Step 1.....	897.40	23413
Step 2.....	931.50	24302
Step 3.....	972.60	25374
Step 4.....	1,013.80	26449

Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.”;

(b) by deleting subclause (2)(a) and inserting the following in lieu thereof:-

“(2) *Teachers* – (a) The following scale of minimum salaries shall apply to Teachers:-

	Per Fortnight \$	Per Annum \$
Step 1.....	1220.90	31852
Step 2.....	1271.00	33159
Step 3.....	1330.00	34699
Step 4.....	1388.90	36235
Step 5.....	1443.80	37668
Step 6.....	1502.80	39207
Step 7.....	1561.70	40744
Step 8.....	1630.60	42541
Step 9.....	1679.60	43820

Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.”;

(c) by deleting subclause (3)(a) and inserting the following in lieu thereof:-

“(3) *Principal Teachers* – (a) The following scale of minimum salaries shall apply to Principal Teachers:-

	Per Fortnight \$	Per Annum \$
Principal Teacher 2 –		
Step 1.....	1718.80	44842
Step 2.....	1758.20	45870
Step 3.....	1797.50	46895
Principal Teacher 1 –		
Step 1.....	1836.70	47918
Step 2.....	1876.10	48946
Step 3.....	1915.30	49969

Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments within the Principal Teacher scale and within the Principal Teacher 1 scale.”; and

(d) by deleting subclause (4) and inserting the following in lieu thereof:-

“(4) *Educational Administrator* – The following scale of minimum salaries shall apply to Associate Directors/ Heads of School:-

	Per Fortnight \$	Per Annum \$
Level 1.....	1954.60	50994
Level 2.....	2005.60	52325
Level 3.....	2056.80	53660
Level 4.....	2111.70	55093

Positions of Associate Director/Head of School within Colleges shall be determined by the employer having regard to the functions and duties to be performed, the level of supervision and other relevant work value considerations.”.

2. In Schedule 5 –

(a) by deleting from the paragraph headed “Conditions of Employment” the salaries of full-time tutors and inserting the following in lieu thereof:-

**“SALARIES**

The following scale of salaries shall apply to full-time tutors:-

	Per Fortnight \$	Per Annum \$
Step 1.....	865.40	22,578
Step 2.....	899.50	23,467
Step 3.....	940.60	24,540
Step 4.....	981.80	25,614

Except as otherwise provided in the Award, progression from one salary step to a higher salary step shall be by annual increments. These are subject to change under the TAFE Queensland Certified Agreement.”; and

(b) by deleting the hourly rates for casual tutors and inserting the following in lieu thereof:-

“A casual tutor shall be paid the hourly rate as prescribed by this Award as follows –

Hours/Day	Rate Code	Hourly Rate \$
8.00am to 6.00pm Monday to Friday .....	TTCO9	19.5600
Before 8.00am or after 6.00pm Monday to Friday and on Saturdays.....	TTC10	29.3400
Sundays .....	TTC11	39.1200
Statutory Holidays .....	TTC12	48.9000

These are subject to change under the TAFE Queensland Certified Agreement.

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 1999 Declaration of General Ruling and earlier Safety Net Adjustments. [Disputed cases are to be referred to the President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.”.

Dated this third day of May, 2001.

E. EWALD  
Registrar.

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Workplace Relations Act 1997*

**TAFE TEACHERS' AWARD - STATE**

**(Gazette, 14th March 1991)**

AMENDMENT  
(Replacement)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 13 August 1999, Vol. 161, No. 18, pages 701 – 702, the following Amendment shall replace the aforementioned Amendment as from the commencement of the first pay period after the first of September 1997 and from the first of September 1998 respectively:-

1. In clause 3.3 (Salaries) –

(a) by deleting subclause 1(a) and inserting the following in lieu thereof:-

“(1) *Tutors* – (a) The following scale of minimum salaries shall apply to Tutors:-

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
Step 1.....	845.40	873.40	22056	22786
Step 2.....	879.50	907.50	22946	23676
Step 3.....	920.60	948.60	24018	24748
Step 4.....	961.80	989.80	25093	25823

Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.”;

(b) by deleting subclause (2)(a) and inserting the following in lieu thereof:–

“(2) *Teachers* – (a) The following scale of minimum salaries shall apply to Teachers:–

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
Step 1.....	1176.90	1200.90	30704	31331
Step 2.....	1227.00	1251.00	32012	32638
Step 3.....	1286.00	1310.00	33551	34177
Step 4.....	1344.90	1368.90	35087	35714
Step 5.....	1403.80	1423.80	36624	37146
Step 6.....	1462.80	1482.80	38163	38685
Step 7.....	1521.70	1541.70	39700	40222
Step 8.....	1590.60	1610.60	41498	42019
Step 9.....	1639.60	1659.60	42776	43298

Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.”;

(c) by deleting subclause (3)(a) and inserting the following in lieu thereof:–

“(3) *Principal Teachers* – (a) The following scale of minimum salaries shall apply to Principal Teachers:–

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
Principal Teacher 2 –				
Step 1.....	1678.80	1698.80	43799	44320
Step 2.....	1718.20	1738.20	44827	45348
Step 3.....	1757.50	1777.50	45852	46374
Principal Teacher 1 –				
Step 1.....	1796.70	1816.70	46875	47396
Step 2.....	1836.10	1856.10	47903	48424
Step 3.....	1875.30	1895.30	48925	49447

Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments within the Principal Teacher scale and within the Principal Teacher 1 scale.”; and

(d) by deleting subclause (4) and inserting the following in lieu thereof:–

“(4) *Educational Administrator* – The following scale of minimum salaries shall apply to Associate Directors/ Heads of School:–

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
Level 1.....	1914.60	1934.60	49951	50472
Level 2.....	1965.60	1985.60	51281	51803
Level 3.....	2016.80	2036.80	52617	53139
Level 4.....	2071.70	2091.70	54049	54571

Positions of Associate Director/Head of School within Colleges shall be determined by the employer having regard to the functions and duties to be performed, the level of supervision and other relevant work value considerations.”.

2. In Schedule 5 –

(a) by deleting from the paragraph headed “Conditions of Employment” the salaries of full-time tutors and inserting the following in lieu thereof:–

**“SALARIES**

The following scale of salaries shall apply to full-time tutors:–

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
Step 1.....	813.40	841.40	21,221	21,952
Step 2.....	847.50	875.50	22,111	22,841
Step 3.....	888.60	916.60	23,183	23,913
Step 4.....	929.80	957.80	24,258	24,988

Except as otherwise provided in the Award, progression from one salary step to a higher salary step shall be by annual increments. These are subject to change under the TAFE Queensland Certified Agreement.”; and

(b) by deleting the hourly rates for casual tutors and inserting the following in lieu thereof:-

“A casual tutor shall be paid the hourly rate as prescribed by this Award as follows –

Hours/Day	Rate Code	Hourly Rate	
		(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
		\$	\$
8.00am to 6.00pm Monday to Friday .....	TTCO9	19.0395	19.2995
Before 8.00am or after 6.00pm Monday to Friday and on Saturdays.....	TTC10	28.5595	28.9495
Sundays .....	TTC11	38.0790	38.5990
Statutory Holidays .....	TTC12	47.5990	48.2490

These are subject to change under the TAFE Queensland Certified Agreement.

NOTE: The rates of pay in this Award include the arbitrated Safety Net Adjustment payable under the 1 September 1998 Declaration of General Ruling and earlier Safety Net Adjustments. Where an employee has received a wage increase in excess of the total \$34 Safety net Adjustments made available since 1 February 1992, that increase may be set off against the wage rate prescribed in this Award. The payments which may be set off include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required. Increases made under previous State Wage Case decisions or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to off-set arbitrated Safety Net Adjustments.”.

Dated this third day of May, 2001.

E. EWALD  
Registrar.