The Queensland Government

Industrial Gazette

PUBLISHED BY AUTHORITY

PP 451207100086 **Annual Subscription $297 + GST** ISSN 0155-9362

Vol. 168 FRIDAY, 21 DECEMBER, 2001 No. 16

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
CA429/01	Sporting Wheelies and Disabled Sport and Recreation Association of Queensland Inc - Certified Agreement 2001	30/10/01	
CA553/01	Hymix Australia Pty Ltd Concrete Cartage Wacol - Certified Agreement 2001	22/11/01	CA642/99
CA555/01	Hymix Australia Pty Ltd Concrete Cartage Cleveland – Certified Agreement 2001	22/11/01	CA639/99
CA557/01	Hymix Australia Pty Ltd Concrete Cartage Windsor – Certified Agreement 2001	22/11/01	CA641/99
CA564/01	Queensland Rail, Infrastructure Program Maintenance Services (Ballast Cleaning and Formation Consists) - Certified Agreement 2001	22/11/01	CA20/00
CA529/01	Eurong Beach Resort - Certified Agreement 2001	26/11/01	CA710/97
CA560/01	White House Residential Support Staff - Certified Agreement 2001	26/11/01	
CA550/01	Queensland Performing Arts Centre - Certified Agreement 2001	29/11/01	CA600/99
CA565/01	Subway Acacia Ridge and Subway Sunnybank - Certified Agreement 2001	29/11/01	
CA543/01	Ramsay Health Care Queensland - Administration Employees - Certified Agreement 2001	30/11/01	CA422/98 & CA546/98
CA579/01	Hymix Australia Pty Ltd Maintenance Employees Certified Agreement 2001	30/11/01	CA643/99
CA586/01	Couran Cove Resort - Certified Agreement 2001	4/12/01	CA119/98
CA567/01	REB Engineering Pty Ltd Mackay Workshop - Certified Agreement 2001	5/12/01	

No/s	Title	Date certified	Cancelling
CA574/01	West Moreton Aged Homes Council - Queensland Enterprise Bargaining - Certified Agreement 4 2001	5/12/01	
CA575/01	Uniting Church Property Trust (Q) Blue Care - Queensland Enterprise Bargaining - Certified Agreement 1 2001	5/12/01	

The following Agreement has been amended by the Commission:–

		Date amended
CA435/00	Crowd Control Industry - LHMU - Certified Agreement	3/12/01

E. EWALD
Industrial Registrar

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Robert Over/RW & LK Over AND Hexlawn Pty Ltd trading as the Ready Towing Group and Brisbane Communications Pty Ltd (No. B251 of 2001)

COMMISSIONER ASBURY 6 December 2001

Application for costs – *Industrial Relations Act 1999* – Contention that application under s. 276 made vexatiously and without reasonable cause – Contention that applicant mislead the Commission in claims made under s. 276 – Consideration of the meaning of an application made vexatiously – Consideration of the meaning of an application made without reasonable cause – Application for costs refused.

DECISION

An application brought by RW and LK Over, and by Mr Robert Over pursuant to s. 276 of the *Industrial Relations Act 1999* (the Act) against Hexlawn Pty Ltd trading as the Ready Towing Group, was dismissed by way of a decision released on 9 October 2001. The respondent seeks costs on that application.

Costs are sought on the basis of the contention that the s. 276 application was made vexatiously or without reasonable cause. It was contended that the facts established at the hearing into the s. 276 application, and admitted by Mr Over, provided no possible basis upon which the claim that the contract was or became unfair, could have succeeded. Further, it was argued that the applicant had knowingly made false claims about his income to the Commission, and that the respondent had been put to the trouble and cost of coming to the Commission to disprove those claims.

The application for costs is opposed on the basis of the contention that the s. 276 application was not made vexatiously or without reasonable cause. In this regard it was argued that the Commission had made no finding in the decision on the s. 276 application, that the applicant had made false claims about his income. It was further argued that this was a case where the applicant's argument could not be maintained, rather than on where it was objectively recognisable as an argument which could not succeed.

The s. 276 application attacked the contract on a number of fronts. It was contended that the contract was unfair because it did not allow for the applicant to earn guaranteed amounts, and that it became unfair because the respondent had terminated it in a harsh and unconscionable manner prior to the agreed date. The termination of the contract was said to have denied the applicant the opportunity to earn the amounts provided for in it.

The s. 276 application failed because the contract was found not to be, or to have become, unfair. The failure of the application was due to non-acceptance of the applicant's evidence about the reasons for his inability to earn amounts guaranteed under the contract and the circumstances in which the contract was terminated.

The application for costs is made under s. 335 of the Act, which provides as follows:–

> "335.(1) The court or commission may order a party to an application to pay costs incurred by another party only if reasonably satisfied –
>
> (a) the party made the application vexatiously or without reasonable cause; …".

In *Goldman v Data General Australia Pty Ltd* (1993) 144 QGIG 379 at 380, McKenzie P referred to the "longstanding philosophy of the Industrial Commission that in the absence of a frivolous or vexatious application or other circumstances that are abnormal costs will not be awarded in the traditional kinds of matters within the jurisdiction of the Industrial Commission.". McKenzie P went on to state that: "No one with a reasonably arguable case need be deterred from proceeding by fear of the consequences of costs unless some abnormal unfair aspect enters into the conduct of the proceedings.".

The power for the Queensland Industrial Relations Commission to vary or void contracts which are found to be unfair, has existed in industrial relations laws in various forms since 1983, and is a traditional matter within the jurisdiction of the Commission. I can see no basis under the current provisions of the Act in relation to costs, for departing from the philosophy referred to by McKenzie P.

Mr Watt for the respondent in the application for costs, argued that the jurisprudence in relation to costs applications appears to establish that a vexatious proceeding is a further step from one instituted without reasonable cause, citing the decision of North J of the Industrial Relations Court of Australia in *Nilson v Loyal Orange Trust* (No. 267/97) where his Honour states:–

> "Whether a matter is instituted vexatiously looks to the motive of the applicant in instituting the proceeding … A proceeding will be instituted vexatiously where the predominant purpose is to embarrass the other party or to gain a collateral advantage.".

I agree with Mr Watt's proposition. Further support for it can be found in the decision of Chief Industrial Commissioner Hall in *Reddick v Ocean Spirit Cruises Pty Ltd* (1999) 161 QGIG 163 at 164 where it was held that the adjective "unreasonable" in the former s. 225(1)(b) took its colour from s.

225(1)(a), which included the adjective vexatious. Relevantly, in that decision, Chief Commissioner Hall went on to state with respect to the previous s. 225(1)(b) that:–

> "It is insufficient to show inadvertence or even neglect. What must be shown is an abuse of process attracting opprobrium of the same magnitude as is attracted by launching an application frivolously or vexatiously or without reasonable cause.".

In this case, there is no basis upon which I could be reasonably satisfied that the applicant made the application vexatiously. There is no evidence before me of any motive on the part of the applicant other than a genuine belief that he had been unfairly treated, and that his treatment had rendered his contract unfair. The fact that I did not agree with this view, and that it could not be maintained to a point where I was satisfied that the contract was or became unfair, does not make the application vexatious.

In *P & J Trucking Pty Ltd v Toll Transport Pty Ltd* (2001) 167 QGIG 56, Blades C considered in detail the provisions of s. 335(1)(a) of the Act in relation to an application made without reasonable cause, citing the following extract from the decision of Wilcox J in *Kanan v Australian Postal and Telecommunications Union* (1992) IR 257 at 264-265:–

> "It seems to me that the way of testing whether a proceeding is instituted 'without reasonable cause' is to ask whether, upon the facts apparent to the applicant at the time of instituting the proceeding, there was no substantial prospect of success. If success depends upon the resolution in the applicant's favour of one or more arguable points of law, it is inappropriate to stigmatise the proceeding as being 'without reasonable cause'. But where, on the applicant's own version of the facts, it is clear that the proceeding must fail, it may properly be said that the proceeding lacks a reasonable cause.".

Blades C also cited *Nilson v Loyal Orange Trust* (see above) as authority for the proposition that the fact that a case is weak or does not have a strong chance of success, does not mean that the case was instituted without reasonable cause. This is consistent with line of decisions in relation to costs under Queensland industrial relations law.

In considering s. 225(1)(a) of the previous *Workplace Relations Act 1997*, which also provided that the Commission could award costs if satisfied that an application was made vexatiously or without reasonable cause, Chief Commissioner Hall said in *Townsville City Council v Brennan* (1998) 157 QGIG 92 at 93:–

> "In my view the reinstatement proceedings were pursued in circumstances in which the applicant, or those who advised him, knew or must have known that the proceedings could not possibly succeed. The conclusion follows that the application was made vexatiously and without reasonable cause.".

In that case, the Chief Commissioner awarded costs against the applicant. Of significance was the fact that the applicant had withdrawn an application for reinstatement following a conciliation conference, at the recommendation of a member of the Commission, and had subsequently sought to pursue that application. Similarly, in *Paterson v Medical Benefits Fund of Australia Ltd* (1999) 160 QGIG 95 the Chief Commissioner awarded costs against an applicant on the basis that an application for extension of time had very poor prospects of success, and even if successful, the applicant would have at best recovered a very small sum of money, and may have recovered nothing at all. It was a significant factor in *Paterson* that the record of the conciliation conference was opened on the question of costs, and indicated that the applicant had been warned that his application was unlikely to succeed, and that it was likely that costs would be awarded against him.

There is no basis upon which I could be reasonably satisfied in this case, that the applicant or those who advised him knew that the proceedings in relation to the s. 276 application could not possibly succeed. Rather the success of the applicant's case depended on the acceptance of the reasonableness of his conduct in relation to a number of matters and inferences favourable to the applicant being drawn. It was not a case where the evidence to be called by the applicant could not have sustained his case.

Further, the application attacked the contract on a number of fronts, and it is inevitable in such cases that some of the grounds on which the contract is said to be or to have become unfair, will be stronger than others. This does not necessarily render the entire application as one made without reasonable cause.

I am not satisfied that the applicant's understating of his income means that the application was either made vexatiously or without reasonable cause. In the decision in relation to the s. 276 application, I drew no conclusions about the applicant's taxation return, as neither counsel had ensured that he was warned about self-incrimination. Although I was reasonably satisfied that the applicant had understated his income, the evidence on this point was not sufficiently conclusive to identify the extent of the understatement with any precision. While the respondent called evidence on this point, that evidence did not involve any analysis of the understatement. The evidence on this point did not unduly draw out the conduct of the hearing overall, particularly when consideration is given to the fact that there were a number of preliminary arguments advanced on behalf of the respondent which had already been determined by the President on appeal in other cases. The ventilation of those preliminary points, extended the conduct of the trial to a greater degree than the evidence about the applicant's income.

Further in *P & J Trucking Pty Ltd v Toll Transport Pty Ltd* abovementioned, costs were not awarded to the respondent, notwithstanding the fact that in his decision in relation to the substantive application, Blades C made an observation that the applicant's taxation returns revealed some disconcerting discrepancies between his evidence and the actual figures. Blades C also stated that: "The figures put forward by the applicant in the taxation returns are such that I would expect the Australian Taxation Office to be most interested. They are 'rubbery' to say the least.". ((2001) 166 QGIG 434 at 435). In this case I am also not prepared to penalise the applicant for understating his income by awarding costs against him, particularly when income was relevant to only one of the limbs of his argument.

The application for costs by the respondent in B251 of 2001 is refused. I dismiss the application and order accordingly.

I.C. ASBURY, Commissioner.

Released: 6 December 2001

Appearances:–
Mr M. Watt of Reidy and Tonkin for the applicant.
Mr A. Heyworth-Smith instructed by Ms C. Harvey, Harvey and Associates for the respondent.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – unpaid wages

Anthony Schostakowski AND Australia Meat Holdings Pty Limited (No. W153 of 2001)

COMMISSIONER BECHLY 12 December 2001

DECISION

An application for recovery of wages has been made by Mr A. Schostakowski of the Department of Industrial Relations on behalf of Ms Shana Leigh Keogh with respect to her part-time employment by Australia Meat Holdings Pty Limited from 11 July 2000 to 6 April 2001.

The parties proposed that the matter be dealt with by way of an interpretation of the Award.

The following are facts agreed between the parties:–

"1. Shana Leigh Keogh ("Keogh") was an adult employee of Australia Meat Holdings Pty Limited ("AMH") for the period 11 July 2000 to 6 April 2001.

2. Keogh was employed under the Clerical Employees Award – State ("the Award").

3. Keogh had previously worked for AMH as a Production Clerk from 1986 to 1995.

4. In her second period of employment Keogh was employed as a Production Clerk working on Friday, Saturday and Sunday at AMH's Dinmore meat processing establishment.

5. Keogh's duties included controlling export orders, running reports and graphs for management, liaising with forepersons about orders and giving information to quality assurance officers.

6. The work performed by Keogh was ancillary to the main business of AMH.

7. The main business of AMH is meat processing and those employees engaged in meat processing are bound by a federal certified agreement – the Australia Meat Holdings Pty Limited – Dinmore Enterprise Agreement 2000 ("the Agreement").

8. Clause 32 of the Agreement sets out the Ordinary Hours of Work for meat processing employees as follows:–

   32.1Subject to Part 3 – Employer and Employee Duties, Employment Relationship and Related Arrangements and Clause 34 – Additional Days and Additional Production, the ordinary hours of work of an employee shall be up to 40 hours actual working time per week (or an average thereof), which may be rostered on any days of the week from Monday to Sunday inclusive.

9. The Friday, Saturday and Sunday roster is one of three rosters ordinarily worked by meat processing employees at the Dinmore meat processing establishment.

10. Keogh was paid wages at the casual rate of $16.84 per hour from 11 July 2000 to 18 July 2000.

11. Keogh was paid wages at the part-time rate of $14.15 per hour from 19 July 2000 to 27 August 2000 and $14.54 per hour until 6 April 2001.

12. Keogh recorded her starting and ceasing times daily on time sheets kept by AMH.

13. Keogh worked on Fridays from 5.30am until 3.30pm, Saturdays from 6.30am to 6.30pm and Sundays from 6.30am to 6.00pm. From 16 March 2001, Keogh's hours changed to 8.30am to 6.00pm for Friday, Saturday and Sunday.

14. Notwithstanding paragraph 13, it was the usual practice that Keogh would work less than 9.5 hours on Saturday and Sunday when production permitted. That is, Keogh's finishing times on Saturday and Sunday were determined by the plant operation.

15. Keogh received a 30 minute unpaid lunch break each day and a 20 minute paid rest pause each day.

16. Keogh was paid at ordinary time rates for 9.5 hours per day and overtime at the rate of time and a-half for the first 3 hours and double time thereafter. As from 16 March 2001 Ms Keogh's ordinary hours changed to 9 hours per day.

17. Keogh was not paid penalty rates for work performed during her ordinary hours on Saturdays and Sundays.

18. All overtime worked was authorised by Janice Harrop, the plant accountant.

19. The pay-week ends on Sunday and the pay-day is Wednesday each week.

20. Keogh received a pay advice with each pay.".

The issues central to this matter are:–

1. Whether clause 4.1.1(f) requires that there be agreement for the working of ordinary hours beyond eight but not more than ten on any day and;

2. What is the effect of clause 4.1.1(e) with respect to work performed on Saturday and Sundays by employees whose work is ancillary to the main business of the employer and where employees engaged in the main business of the employer have a prescribed spread of hours different from that found in the Clerical Employees Award – State.

With respect to the matter of agreement, Ms Keogh states that she was prompted to apply for a job she saw advertised in a newspaper. This advertisement in fact had not related to the position she actually gained but the advertisement referred to the essential elements of this matter, that is work on Saturdays and Sundays. The advertisement identified that the position was only available on Friday, Saturday and Sunday.

She states that she was interviewed by Ms Janice Harrop who explained the nature of the job to her. She asked the hours of work and was told that ten hours per day were to be worked.

Ms Harrop agreed that she advised Ms Keogh that the daily hours would exceed eight but that the actual hours to be worked had not been finalised, as the position was a new one.

Ms Keogh commenced working as a casual employee initially and, after a week was paid as a permanent part-time employee. Some details as to daily hours and payments were provided in writing at the commencement of permanent employment.

It would appear that the arrangement as to how the hours were to be worked was the same as for those employees she worked with. The evidence indicates that she fitted into the pattern of hours then being worked by other employees. That pattern included leaving the plant before the completion of 9.5 hours on a Saturday and Sunday when the plant finished early.

The Department argues that there was no discussion about alternative hours to the ten hours offered and thus there was no agreement as required by clause 4.1.1(r) in the Award. As a result it claims that overtime should be paid for hours worked in excess of eight each day.

This aspect of the matter can be shortly disposed of.

The requirement claimed by the Department to exist in clause 4.1(f) in fact does not exist.
Clause 4.1 does not limit daily hours to eight or require agreement to extend to ten or less.

The Award at 4.1.1(a), limits ordinary hours to:–

38 hours within a work cycle not exceeding seven consecutive days;
76 hours within a work cycle not exceeding fourteen consecutive days;
114 hours within a work cycle not exceeding twenty-one consecutive days; and
152 hours within a work cycle not exceeding twenty-eight consecutive days;

Clause 4.1(1)(f) gives a right to work up to ten ordinary hours on any day, but where the right to work more then eight but less than ten hours is exercised, the arrangement as to how those hours are to be worked is to be agreed upon.

The arrangement here referred to relates to when and how the hours are to be worked on any one day or days and how the total weekly, fortnightly, three weekly or four weekly cycles are to be structured.

The considerations relating to the structuring of the 38 hour week are not necessary with respect to Ms Keogh's employment as she was a part-time employee who initially worked 28.5 hours each week.

The only consideration is whether the arrangement as to the working of the 9.5 ordinary hours each day was agreed.

While no specific evidence was given on this point, it is reasonable to take from Ms Keogh's evidence generally that she agreed to the arrangement entered into as to when and how the 9.5 hours of work were to be performed on the day in question. From the evidence it is apparent that there were other employees, including clerical staff, who worked up to a ten hour day and have done so for some time and it appears that Ms Keogh accepted the working arrangement which was utilised by the majority of employees. Agreement as to the days upon which work was to be performed can be taken from the fact that she applied to work on the days in question.

The implementation of daily hours exceeding eight but not exceeding ten for existing employees without agreement as to the arrangement of hours would constitute a breach of the Award but not attract the overtime penalty claimed.

With respect to the matter of spread of hours subclause (e) of clause 4.1 prescribes as follows:–

> "(e) Notwithstanding the *provisions of provisions (b) and (d)* of this clause, the spread of ordinary working hours for employees employed under this Award whose work is ancillary to the main business of the employer, may be the same spread applicable for award employees engaged in the main business of the employer.".

The subclause was inserted into the Award on 11 September 1990 as part of what is known as the structural efficiency process which included fundamental review of awards to implement measures to improve efficiency in industry. One of the measures went to varying awards to ensure that working patterns and arrangements enhance flexibility and the efficiency of industry.

It is agreed that the work performed by Ms Keogh is ancillary to the main business of the respondent and it is not contested that employees bound by the Certified Agreement are award employees.

The point at issue is whether the application of subclause (e) absolves the respondent from payment of penalties prescribed in the Clerical Employees Award – State for work performed on Saturday (clause 4.1 (1) (b) (ii)) and Sunday (clause 4.2 (2)).

These subclauses provide as follows:–

> "4.1 (1) (b). The ordinary hours of work prescribed herein may be worked on not more than five consecutive days in a week, Monday to Saturday inclusive subject to the following:–
>
> (i) Except as otherwise specifically provided herein, ordinary hours may be worked between 6.30a.m. on Mondays to Fridays inclusive, and between 6.30a.m. and 12.30p.m. on Saturdays. Such spread of ordinary daily working hours may be altered as to all or a section of employees provided and there is agreement between the employer and employee or the majority of employees involved.

(ii) Ordinary hours worked by all employees, excluding casuals, on a Saturday between the hours of 6.30a.m. and 12.30p.m. shall be paid for at the rate of time and a-quarter.

(iii) Any arrangement of hours which includes a Saturday as ordinary hours shall be subject to agreement between the employer and the majority of employees involved.

. . .

4.1 (1) (d) The ordinary starting and finishing times of various groups of employees or individual employees, may be staggered, provided that there is agreement between the employer and the majority of employees in the enterprise or sections(s) involved.".

The respondent argues that the effect of clause 4.1(1)(e) is to remove the whole of subclause (b) and (d) from application to Ms Keogh's employment and to substitute therefore the provisions of the instrument which govern the main business of the employer.

The Department argues otherwise and proposes that there is only a limited exclusion of parts of subclause (b) and that the requirement to pay for ordinary hours performed on a Saturday at the rate of time and a quarter remains as well as a penalty of double time from work on Sundays which arises under the overtime provisions in clause 4.2.

However, not the whole of the nominated nine and a-half ordinary hours on Saturday are claimed by the Department at the quarter-time penalty addition, only the hours worked between 6.30a.m. and 12.30pm. This can be illustrated by the claim for hours worked between 6.30a.m. and 5.30p.m. on the Saturday in the week ending 3 September 2000:–

6.30a.m. – 12.30p.m. 6 hours x time and a quarter
(Assume lunch from 12.30p.m. to 1.00p.m.)
1.00p.m. – 3.00p.m. 2 hours x ordinary time
3.00p.m. – 4.30p.m. 1.5 hours x time and a-half
9.5 total nominated ordinary time
4.30p.m. – 5.30p.m. 1 hour – overtime
10.5 – total hours worked

The claim made for time and a-half for some hours worked from 3.00pm to 4.30pm is as a result of the Department's interpretation of the application of clause 4.1(1)(f). That interpretation has been found to be inappropriate.

If the Department's interpretation in the earlier matter and this matter were appropriate and if agreement had been reached to work beyond eight hours, payment for hours worked beyond eight and up to ten on a Saturday would not attract a penalty loading. That is work performed between 6.30a.m. and 12.30p.m. on a Saturday would attract a loading of quarter-time but work performed after 12.30p.m. within ordinary hours would not attract any loading ie: from 1.00p.m. to 4.30p.m.

Alternatively the Department might claim that an entitlement to time and a-half for some hours worked on a Saturday may arise under clause 4.2 "Overtime" if it is found that it is not possible that ordinary hours beyond those times specified in the Award for a Saturday can be worked. But that is not the effect of clause 4.1 (1) (e). There is a spread of hours for ordinary work on Saturday which can be expanded to accord with the hours permitted by the instrument covering the main business of the employer. In such a case overtime would not be payable unless the ordinary hours permitted by that instrument on a Saturday were exceeded (but not exceeding ten as limited by the Clerical Employees Award – State).

Clause 4.2 "Overtime" of the Award provides that all time worked on Sundays shall be paid at the rate of double time in addition to the ordinary weekly wage paid to the employee. The Department claims for Ms Keogh the rate of double time for all time worked on Sundays.

What is now required to be determined is whether work performed beyond 12.30pm on Saturday and any work performed on Sunday, in the circumstances now under consideration, can be considered as falling within the spread of ordinary hours.

The intent of clause 4.1(1)(e) is to provide common ordinary working hours for employees engaged in the main business of the employer and also for ancillary clerical employees.

The spread of hours not only refers to the hours within which daily ordinary hours may be worked, but also the days upon which such hours may be worked.

Subclause (b) sets a spread of days upon which ordinary hours may be worked as well as times within which ordinary hours may be worked on those days.

The instrument covering the main business of the employer expands the time frame within which ordinary hours may be worked both as the days of the week and hours of each day.

It is this which is referred to in subclause (e), which does not limit the exclusion to a part of subclause (b), but extends the exclusion to the whole of subclause (b) in the terms "Notwithstanding the provisions of (b) and (d) . . .".

However the exclusion relates to spread of hours, not the rate at which payment is to be made for such ordinary hours worked.

Subclause (b)(ii) sets a loading of 25 percent for work performed within the permitted spread on a Saturday. The permitted spread is 6.30a.m. to 12.30p.m. That permitted spread is expanded by way of the operation of subclause (e) and can be up to ten ordinary hours in the present circumstances.

The clear intent is that all ordinary hours worked on a Saturday be paid for at the rate of time and a-quarter, whether limited to the hours of 6.30a.m. to 12.30p.m.. or some greater spread permitted through the operation of subclause (e).

Work on Sunday within ordinary time is a different matter. The Clerical Employees Award – State makes no provision (other than through subclause (e)) for ordinary hours to be worked on Sunday in the circumstances before me. There is no provision for any additional loading for ordinary hours worked on Sunday.

Penalty rates prescribed in clause 4.2 are prescribed for overtime, not ordinary time. The rate prescribed for overtime on Sundays is double time.

This penalty prescription is provided in clause 4.2(2) in the following terms:–

"(2) All work done on Sundays by employees shall be paid at the rate of double time in addition to the ordinary weekly wage rate paid to the employee" (emphasis added).

Clause 4.2 is headed "Overtime". Attempts to apply subclause 4.2(2) to ordinary hours worked on Sundays through the operation of clause 4.1(1)(e) are inappropriate. While Clause 4.2(2) does open with the words "All work done on a Sunday" those words must be read in the context of overtime, not ordinary time. To do otherwise would result in a payment of triple time for ordinary time worked on a Sunday and double time for overtime.

The Respondent has paid for nine and a-half hours worked on Sunday at ordinary rates and overtime at the rate of time and a-half for the first three hours. The overtime payment is incorrect. Double time must be paid for overtime worked on Sundays. An adjustment for this payment needs to be made.

The respondent has paid a loading of 30% of one day's pay prescribed in the Certified Agreement for work performed by regular part-time employees who complete their hours of work as required on Friday, Saturday and Sunday. Both instruments make some provision for a loading for work performed on a Saturday. In the case of the Agreement the loading is dependent upon the employee being ready, willing and available to work as required on a Friday, Saturday and Sunday. The loading of 30% of one day's pay is somewhat greater than the 25% loading prescribed in the Award and greater again if the award loading is limited to 12.30p.m. The agreement provision is contained under Part 5 – Hours of Work, Breaks, Overtime and Weekend Work at clause 36. It was not contended by the Department that the loading contained in the Agreement should have been paid to Ms Keogh in place of the 25% loading in the Award. It is unlikely, in my view, that an interpretation of the spread of hours commonalty provision could be intended to include commonalty of leadings applicable to the work in question.

The Department also referred in passing to hours of work prescribed by clause 4.6 (2) for part-time employees. The provisions are subject to the ability to work the same spread of hours as those applicable to the main business of the employer (clause 4.1(1)(e)) and the entitlement to work up to ten daily ordinary hours (clause 4.1(1)(f)).

The Clerical Employees Award – State should be interpreted in the following manner:–

Ordinary hours of work shall not exceed ten hours on any one day. If ordinary hours are to exceed eight the arrangement as to the working of the average thirty-eight hour weeks shall be by agreement.

With respect to the time worked by Ms Keogh on Friday, Saturday and Sunday the following payments are applicable:–

Friday
Ordinary time for 9.5 hours. Overtime at the rate of time and a-half for the first three hours and double time thereafter.

Saturday
Time and a-quarter for 9.5 hours ordinary time. Overtime to be paid as for Friday.

Sunday
Ordinary time for 9.5 hours. Overtime to be paid at the rate of double time.

R. E. BECHLY, Commissioner.

Released: 12 December 2001

Appearances:–
Mr A. Schostakowski for the Department of Industrial Relations.
Mr R. E. Wotherspoon, for Australia Meat Holdings Pty Limited.

##

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996 – s. 170LJ – certification of agreement

Brisbane City Council
(AG2001/7227)

Industrial Relations Act 1999 (Qld) – s. 156 – certifying an agreement

Brisbane City Council
(CA601 of 2001)

BRISBANE CITY COUNCIL ENTERPRISE BARGAINING AGREEMENT 2001

COMMISSIONER BACON BRISBANE, 12 DECEMBER 2001

Certification of Division 2 agreement with organisation(s) of employees (C'wealth).
Division 2 - certification of agreement (Qld).

DECISION

Background

On 15 November 2001 the Brisbane City Council (BCC) lodged in the Brisbane Registry of the Australian Industrial Relations Commission (AIRC) an application (the Federal matter) for the certification of an agreement that was said to be made pursuant to section 170LJ of the *Workplace Relations Act 1996* (the Federal Act). The application for certification was allocated to the Commission as currently constituted. The application is designated as AG2001/7227. On 29 November 2001 the BCC lodged with the Queensland Industrial Registry an application (the State matter) to the Queensland Industrial Relations Commission (QIRC) for the certification of an agreement pursuant to s.156 of the *Industrial Relations Act 1999 (Qld)* (the State Act). President Hall of the QIRC nominated myself to sit on the State matter which has been designated as Case No. CA601 of 2001.

At the request of the BCC, the AIRC and the QIRC sat jointly on 6 December in order to deal with the two applications. At the commencement of proceedings, however, the BCC asked that the matters be dealt with separately and that the Federal matter precede the State matter. The Commissions determined that they would continue to sit jointly but that submissions in the Federal matter would precede the submissions in the State matter.

It appears that the enterprise bargaining negotiations in relation to these two matters have been lengthy and on the submissions of most of the unions frustrating and somewhat unrewarding. As is its usual practice the BCC sought to achieve one agreement with its entire workforce. The unions had no objection to that course. The BCC workforce, for the purposes of this decision, can be described as falling into two groups. One group (and I only use this term for descriptive convenience) can be described as the white-collar group. Employees in that group (apart from any certified agreements) have their wages and conditions regulated by awards of the AIRC. The second group (which I describe on the same basis as the first) is the blue-collar group. Employees in that group (apart from any certified agreements) have their wages and conditions regulated by awards of the QIRC. It has been the past practice of the BCC and the unions, irrespective of which union is eligible to represent employees in the above groups (ie whether they be Federally or State registered) to negotiate one agreement for the entire workforce. That agreement is then certified by both the AIRC and the QIRC. Prior to the 1996 amendments to the Federal Act certification by both Commissions was a legal necessity. Since the 1996 amendments certification in both jurisdictions is not legally necessary. It seems, from my knowledge of local government administration and the fact that no party has raised complaint about it, that this arrangement has served the parties well since at least 1993. Indeed, the agreement that is now before the two Commissions is titled “EBA 4”.

There have been obvious difficulties in the negotiation of EBA 4. When the applications were made to both Commissions the agreement had only been signed by the BCC and none of the relevant unions had signed it. Indeed, the process that lies behind the making of the agreement was that it was put to a vote of BCC employees and it was only after what is said to be valid majority of those employees approved the agreement that any unions were invited to sign it.

There are three unions who are said to be eligible to be a party to an agreement made pursuant to s.170LJ of the Federal Act. Those unions are the Australian Municipal, Administrative, Clerical and Services Union (ASU); The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) (collectively the Federal Unions). At the time of the hearing all three unions had signed the agreement. The AMWU raised with the Commission a number of issues which it was submitted needed to be considered by the AIRC to ensure that all of the statutory requirements had been met. I will return to those issues later herein.

There are 12 unions that are said to be eligible to be party to an agreement certified pursuant to s.156 of the State Act. They are:

- Australian Building Construction Employees and Builders’ Labourers’ Federation (Queensland Branch) Union of Employees (BLF);
- Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees (ALHMWUQ);
- Automotive, Food, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (AMWUQ);
- Federated Engine Drivers’ and Firemen’s Association of Australasia Queensland Branch, Union of Employees (FEDFA);
- Federated Ironworkers Association of Australia (Queensland Branch) Union of Employees (FIA)
- The Australian Workers’ Union of Employees, Queensland (AWUQ);
- The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (CFMEUQ);
- The Electrical Trades Union of Employees of Australia, Queensland Branch (ETUQ);
- The Plumbers and Gasfitters Employees Union of Australia, Queensland Branch, Union of Employees (PGEUQ);
- Australia Rail, Tram and Bus Industry Union of Employees (Queensland Branch) (ARTBIU);
- Transport Workers’ Union of Australia, Union of Employees (Queensland Branch) (TWUQ); and
- National Union of Workers, Industrial Union of Employees, Queensland (NUWQ).

(collectively the State Unions)

At the time of the hearing of the State matter five State unions had signed the agreement.

The central issue and the one which causes most if not all of the angst to certain union parties to the negotiations is the following situation. It appears that some unions at a point in the negotiation approached BCC in order to have a proposed agreement put to a ballot. BCC agreed. Some unions were strongly opposed to this course believing that a better “offer” could be negotiated with BCC. Ultimately the ballot took place. The ballot result, amongst other things, allowed identification of the voting results for the two separate groups (ie “Federal” and “State” employees). That is, for whatever reason the result of the ballot was presented in the following way:

	yes	**no**	**informal**	**Total**
Federal ballot count	1691	1006	6	2703
State ballot count	897	1335	9	2241
Overall ballot count	2588	2341	15	4944

Thus on the foregoing result it can be construed that the agreement to be certified under the Federal Act was approved by a valid majority of the white-collar (Federal) group and that the agreement to be certified pursuant to the State Act did not win the approval of a valid majority of the blue-collar group. The BCC adopts the position that the overall ballot result is the one that is relevant to any application for certification made pursuant to either the Federal or State act.

Apart from that issue a further matter that concerns the State unions is the operation of the Federal Act. Even on the view of the State unions there is a valid majority of employees who approve the agreement that is made pursuant to s.170LJ (which appears in Division 2 of Part VIB) and which is to be certified pursuant to s.170LT of the Federal Act. As the agreement is only one document it is said that its coverage extends to all employees of the BCC whose classification appears in Schedule 1 of the Agreement. If such an agreement was certified s.170M(1) of the Federal Act provides that the agreement would bind the employer and *“all persons whose employment is at any time when the agreement is in operation, subject to the agreement”*.

Thus all employees of the BCC including members of the State unions and who are covered by State awards, would become bound by the Federal agreement.

The dilemma facing the State unions is that if they rely on that part of the ballot which is described as the "State ballot count" and which did not support the agreement and the Federal agreement is certified, it will bind their members. The result of such an outcome has (at least two) substantial consequences. The first is that the employees will enter a jurisdiction in which the State unions are unable to represent them. The second is that in such circumstances (ie a Federal certified agreement) the BCC would have an agreement which binds all of its employees and it would no longer have any requirement to continue negotiations with the State unions.

In keeping with what is said to have always been the intended outcome of the negotiation, the BCC is offering to the State unions the agreement (which is before the QIRC for certification) together with an undertaking to the effect that any matters involving the State unions' members will continue to be dealt with by the QIRC and that no jurisdictional exception to any applications before the QIRC will be taken by BCC on the ground that there is in existence a Federally certified agreement which binds the employees. For completeness the BCC undertaking is repeated below:

> *"This undertaking is directed to any State registered union that is a signatory to this EBA4 agreement when it is certified by the Queensland Industrial Relations Commission ("QIRC").*
>
> *For the purpose of this undertaking EBA4 Agreement means the EBA4 Agreement as certified by this Commission in these proceedings.*
>
> *Brisbane City Council undertakes that it will not challenge the right to make any applications to or proceedings in the Queensland Industrial Relations Commission by those State registered Unions under the EBA4 Agreement on the grounds that an agreement identical in its terms (apart from the parties) has been certified by the Australian Industrial Relations Commission."*

The AMWU proposed undertakings

During the hearing of the application for certification of the agreement pursuant to the Federal Act AMWU brought to the AIRC's attention a number of matters which it said may fall short of the statutory requirements necessary for the certification of the agreement. The AMWU did not oppose the certification of the Federal agreement but did seek undertakings and (it seems) at least one variation to the agreement. The BCC refused to give any of AMWU suggested undertakings and opposed any variation to the agreement which limited its operation to only Federal award employees. It is convenient to deal with each of those matters now.

The power of the AIRC to require a party to an agreement to give the Commission an undertaking in relation to the operation of an agreement can be found at s.170LV of the Federal Act. Subsection 170LV(1)(a) provides that if, under s.170LT or s.170LU the Commission has grounds to refuse to certify an agreement, the Commission may accept undertakings from one or more of the persons who have made the agreement in relation to the operation of the agreement and, if satisfied that the undertaking meets the Commission's concerns, may certify the agreement. Thus it is clear that in order for the Commission to demand undertakings from parties to agreements, the Commission must first be of view that it has grounds to refuse to certify the agreement. Absent such grounds the Commission has no power to demand that undertakings be given or certification will be withheld.

AMWU sought that an undertaking be given by BCC the effect of which would be to clarify or remedy what is said to be an historical inaccuracy in clause 7 of the agreement. The inaccuracy is said to be that clause 7 does not reflect the fact that three rank and file employees attended the negotiations (or at least some of them) as observers. BCC refuses to give such an undertaking. Obviously the failure of the parties to make such an observation in the terms of the agreement is not a ground on which the Commission could refuse to certify this agreement pursuant to ss.170LT or 170LU of the Federal Act. Accordingly the Commission has no power to require BCC or any of the other parties to this agreement to give the undertaking suggested by the AMWU.

The next undertaking sought by the AMWU relates to clause 13 of the agreement and specifically the point that is said to require clarification is the following words "*after 12 months equivalent full-time employment, casual employees may apply for permanent employment in their role*". The undertaking sought is in these terms "*any persons with 12 months or more employment in a casual capacity can apply for permanency so long as this employment is continuous or that they have 12 months employment in the previous 24"*. I find that this matter does not raise an issue that is relevant to sections 170LT or 170LU of the Federal Act. The AMWU did not take me to any specific subsections which AMWU contend are contravened or not met unless the undertaking was given. BCC refuses to give the undertaking. The AIRC could not refuse to certify this agreement on the ground advanced by the AMWU. Accordingly the Commission has no power to require that the undertaking sought be given.

For the same reasons the undertakings suggested by the AMWU in relation to clauses 14 and 15 must suffer the same fate as the foregoing suggested undertakings.

The "transfer" from the State to the Federal jurisdiction

The next issue raised by the AMWU is the submission the effect of which appears to be that the Commission only certify the Federal agreement on the basis that its operation be limited to bind only those employees of BCC who are covered by Federal awards. The AMWU did not advance precisely how this would be done but nevertheless it submissions on the point are clear. Those submissions are that at no time did the BCC advise the State unions that it intended to have certified a Federal agreement which would bind the State union members, the effect of which would be to "transfer" those employees to the Federal jurisdiction. Rather, the BCC during the negotiations gave the distinct impression that even though one document was being negotiated it would be certified in the two Commissions on the basis that the operation of the Federal agreement would be limited to those employees covered by Federal awards and the operation of the State agreement would be limited to those employees who are covered by State awards. Specifically the AMWU rely on the ballot papers that were produced by the BCC for the ballot. As indicated earlier the ballot papers allowed identification, by colour coding, of the voting results of specific groups within the total of the employees eligible to vote. Employees covered by Federal awards voted on a green ballot paper and on all green ballot papers the following appeared:

> *"The provisions of Division 2 of Part VIB of the Workplace Relations Act 1996 (Federal), prescribe that s.170LJ that 'The agreement must be approved by a valid majority of the persons employed at the time whose employment will be subject to the agreement'."*

Employees covered by State awards (depending upon other criteria) voted on one of four different coloured ballot papers. Apparently this was for the purpose of identifying other subsets of results. No issue about that is taken in these proceedings. Each of those four different coloured ballot papers on which State employees voted contained the following:

> *"Section 156(1)(g) of the Industrial Relations Act 1999 (Qld), provides in part, that the Queensland Industrial Relations Commission must certify an agreement if it is satisfied a valid majority of the relevant employees employed at the time approved the agreement."*

The AMWU submits that this clearly reflects what the intentions of the parties were at the time of the ballot. Those intentions were as submitted by the AMWU and not those that are now advanced by the BCC. In any event, submits the AMWU, the points noted on the ballot papers would clearly have influenced the intentions of the voter. That is that voters would have expected that the limit of the coverage of each of the agreements to be certified in the AIRC or the QIRC would be consistent with, and determined by, the Federal/State award coverage. BCC is now not acting consistent with that approach and as a result the BCC is conducting itself in "bad faith".

To further support its position on this point the AMWU relies on a decision of Senior Deputy President Drake [PR910661] wherein Her Honour refused to certify an agreement which had been said to be made pursuant to s.170LK of the Federal Act because the parties to the agreement had historically operated within the New South Wales industrial relations jurisdiction and that the fact that the employer intended to have an agreement certified pursuant to the Federal Act was not adequately explained to the employees at the time of the making of the agreement. Her Honour determined that [para 21]:

> *". . . Jurisdiction is a matter that must be explained to employees who will be subject to the agreement. The jurisdiction of the agreement ie whether or not it is a State or Federal agreement, is the context of the agreement and is a fundamental term of the agreement. The legal and industrial consequences of the difference are important matters."*

BCC submits that it always intended to negotiate one agreement with its workforce. That one agreement would be subject to one ballot of the entire workforce. The result of the ballot would determine whether a valid majority of employees who would be subject to the agreement would approve the agreement. That its workforce is covered by awards made in two separate industrial jurisdictions is simply the industrial framework in which the BCC must bargain. Given that industrial framework the BCC believes that if it is to have one agreement with its entire workforce it must have that agreement certified by both the Federal and State Commissions. This must be done to ensure that the relevant unions, irrespective of whether they are Federal or State registered, are able to continue to exercise their representational rights in relation to their members. Because of the operation of s170LZ of the Federal Act which provides that the Federal agreement to the extent of any inconsistency will prevail over the State agreement BCC submits that it is prepared to give an undertaking the effect of which would be to ensure that State unions would in relation to this agreement continue to operate within the jurisdiction of the QIRC.

BCC further submits that this is a practical and effective approach to the industrial framework in which it finds itself. The centrepiece of the BCC position is that it wishes to bargain on the basis of the outcome being subject to one ballot of its entire workforce. To split the workforce on award based jurisdictional grounds for agreement making is artificial and unnecessary and in any event exposes BCC to the possibility of one group approving the agreement whilst the other does not. This would result in bargaining outcomes which would be difficult to resolve and which BCC is entitled to endeavour to avoid.

BCC also submits that the position that some of the unions resist in these proceedings prevails within its agreements currently. Whilst the issue may not have ever come into focus previously it is a fact that there is currently a Federal certified agreement and a State certified agreement. There is no undertaking of the kind proposed in these proceedings. The current Federal agreement covers the entire workforce. It prevails over the State agreement to the extent of inconsistency. Not aware that the State employees had been "transferred" to the Federal jurisdiction, the BCC and State unions continued to operate within the jurisdiction of the QIRC. This is despite the operation of s.170LZ of the Federal Act. BCC by its approach in these proceedings simply wants to continue its industrial arrangements with its employees and the relevant unions on the same basis on which they have operated in the past. BCC has no desire to split the workforce for the purposes of enterprise bargaining, nor does it wish to disadvantage employees who want to be represented in the respective jurisdictions by either their Federally or State registered unions. The Federal and State Acts allow this agreement to be certified in both jurisdictions providing the relevant statutory tests are met. It is within the power of the BCC to give the undertaking that it has to the State unions to ensure that any disputes that arise continue to be dealt with by the QIRC.

It would be an extraordinary outcome, submits BCC, that as a result of this jurisdictional issue it was forced back to the bargaining table with the State unions on the one hand and on the other the agreement was certified in relation to its employees covered by Federal awards, the result of which may be different outcomes as between the two groups into which its workforce would be artificially split for bargaining purposes. Such an outcome was never intended by the parties. It was always intended that there would be one agreement for the entire workforce and that objective should not now be lost because of the operation of the two statutes.

The submissions made in relation to the State agreement are fundamentally the same as the foregoing. Further, AMWU submits that the State agreement was not approved by a valid majority of employees and cannot be certified.

ALHMWUQ has signed the State agreement but nevertheless "raised and left on the record for [the QIRC] to consider" a number of issues. The first is said to be the failure of the BCC to comply with "s.146 - Negotiations must be in good faith". Submissions were made but no evidence produced that the BCC had bargained in a way that offended two of the examples of "good faith in negotiating" contained at s.146 of the State Act. Similarly submissions were made that the BCC failed in its obligations created in s.156(1) to explain the terms of the agreement in a way that was appropriate, having regard to the person's particular circumstances and needs. The failure is said to relate to those persons from a non-English speaking background and persons with limited literacy or numeracy skills.

It is also submitted that the ALHMWUQ has great difficulty with the coloured ballot papers and that this might need to be pursued in another jurisdiction.

There is in support of the State agreement a Statement affirmed by Ms J. Munro, the Chief Executive Officer of the BCC. That Statement outlines the steps taken by BCC to ensure compliance with s.143 of the State Act. Ms Munro was not required by ALHMWUQ for cross examination and ALHMWUQ did not call evidence to establish a factual base on which a finding could be made that BCC had failed its s.143 obligations. On the evidence before the QIRC such a finding could not be made. The obligation to make out its case rests with the ALHMWUQ. It has not met its obligation.

The same can be said of the ALHMWUQ submission concerning the alleged failure of BCC to meet its obligations to explain the terms of the agreement in s.156(1). Ms Munro's statement specifically states that "translated summaries of the agreement in languages other than English were available on request" and "an easy to read guide to EBA 4 was provided for all employees". Other explanatory sessions are described in which oral, printed, telephonic and intranet based mediums were also used. Ms Munro was not required for cross examination. The Commission is entitled to and will rely on her uncontested evidence.

The Federal agreement

In deciding whether or not to certify the Federal agreement it is necessary to consider the AMWU submission that it was never the intention of the parties to "transfer" the members of the State unions to the Federal jurisdiction. I respectfully adopt the determination of Her Honour Senior Deputy Drake which was cited earlier. As jurisdiction is a "fundamental term of the agreement" subsection 170LJ(3)(b) requires that the BCC must take reasonable steps to ensure that before any approval is given, the terms of the agreement are explained to all the persons. There is insufficient evidence for the Commission to be satisfied that in relation to the term of the agreement which would effect a "transfer" of jurisdiction for State award employees the requirement of the subsection has been met. Rather, on the evidence, or lack of it, a more likely finding is that the requirement of the subsection has not been met.

The ballot papers do not advance BCC's cause on this point. Rather, they support the contention put forward by the AMWU. That submission would carry significant weight but for the undertaking BCC is prepared to give. It is noted that the undertaking was not given to the State unions prior to the ballot but was given on the afternoon of 5 December. Never the less subsection 170LJ(3)(b) relevant to the AMWU submission only has work to perform if the result of the certification is to change to the Federal jurisdiction the State award employees.

BCC by the undertaking does not seek to have the State employees "transferred" to the Federal jurisdiction and is prepared to take steps to prevent such an outcome. In fact BCC through the undertaking is prepared to continue in effect the jurisdictional arrangements that are currently in place. In any event the BCC undertaking effectively allows to prevail the industrial arrangements contended for the AMWU (and others). Such an outcome should not be viewed negatively by the Commission. It is one means of continuing (and formalising) the current (ad hoc) arrangements whilst achieving the objective of one agreement for the entire workforce certified in both jurisdictions. There are other ways to achieve such an outcome however, such circumstances are not presently before the Commission and considering the merit or otherwise of such circumstances may be an interesting but ultimately futile exercise. The Commission can only consider the factors that are present in these two matters. Had the undertaking not been given the Commission would have refused to certify the Federal agreement because of the failure of BCC to meet its obligations pursuant to ss.170LJ(3)(b).

There is significant weight in the BCC submission that it is entitled to negotiate with its entire workforce and endeavour to achieve an all embracing outcome. Such outcome should be the subject of one ballot of the entire workforce and that single ballot should determine whether or not a valid majority of employees approve (or disapprove of) the agreement. The fact that the ultimate agreement for the reasons described earlier needs to be certified pursuant to both the Federal and State Acts should not be a bar to the practical and legitimate negotiating objective of the BCC. It is noted that none of the unions, Federal or State, have in the past or during these proceedings opposed such an approach. I am unable to identify any statutory bar to such an approach. In any event I am of the view that, should it be necessary, a wide interpretation should be taken of the Federal and State Acts which results in complementary operation and allows for appropriate and practical, rather than narrow and artificial outcomes in enterprise bargaining.

On the basis of the undertaking that has been provided to the State unions, the Commission is satisfied on the material that the requirements of the Federal Act have been met and accordingly the AIRC must certify the Federal agreement.

The State agreement

The relevant result from the ballot for the purposes of determining whether or not a valid majority of employees approve the Federal and/or State agreement is the "overall" ballot result. The State agreement is intended to cover all employees including those who would otherwise have their wages and conditions determined by a Federal award. The State Act does not preclude a State agreement from binding or applying to such employees. If an agreement is to be certified pursuant to the State Act and provides in its terms that it binds or covers such employees then they are entitled to vote in any ballot which will determine whether a not the agreement is approved by a valid majority of employees. This agreement was so approved. Accordingly, and as all other statutory requirements are met, the State agreement will be certified.

The State agreement has been signed by the AWUQ, the FIA, the ARTBIU, the ALHMWUQ and the ETUQ. All of the other State unions who appeared in this matter advised the QIRC that if the State agreement was to be certified each union would like an opportunity to consider (before certification) whether or not they should become a party. Indeed some State unions expressed the view that in the event that the State agreement was to be certified they were authorised to become a party to it. Each State union which is yet to sign the agreement will be given an opportunity to do so. The QIRC will certify the State agreement on Friday 14 December 2001. Each State union who has not already done so will have until 12.00 Midday on that day to lodge with the Registry a duly executed copy of the page of the agreement headed "*Signatories to the Brisbane City Council Enterprise Bargaining Agreement 2001"*

Certification

For the foregoing reasons the Commissions will certify both agreements. The agreements will come into effect from 14 December 2001 and will have a nominal expiry date of 30 June 2003. Certificates giving effect to this decision will be issued by the respective Commissions during the afternoon of 14 December 2001.

BY THE COMMISSION:

K. BACON
COMMISSIONER

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

BACON MANUFACTURING AND MEAT PRESERVING AWARD – SOUTH-EASTERN DIVISION

(Gazette, 11 September 1968)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 19, pages 436-439, the following correction is made:–

In Item 1:–

By deleting from subclause (10) "Dead pigs when required to be cut up" of Clause 16 the amount of "15.625c" and inserting the amount of "16c"*(1)* in lieu thereof.

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*16c*	*16c*	*16c*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

BRIDGE, WHARF AND PIER CONSTRUCTION AWARD – STATE

(Gazette, 27 March, 1984)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 19, pages 452-454, the following corrections are made:–

In Item 2:–

(a) by inserting in columns 1, 2 and 3 respectively:–

"6(9)", "$33.40" and "$34.40" *(1)*;
"6(10)", "$32.50" and "$33.50" *(2);*
"6(11)", "$43.30" and "$44.60" *(3);* and

(b) by inserting in columns 2 and 3 the amounts of "$2.011" and "$2.073" *(4)* respectively opposite clause 37(2).

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*31.60*	*32.60*	*33.40*
(2)	*30.70*	*31.70*	*32.50*
(3)	*40.90*	*42.40*	*43.30*
(4)	*1.901*	*1.96*	*2.011*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

CEREBRAL PALSY LEAGUE OF QUEENSLAND AWARD

(Gazette, 23 May 1997)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 19, pages 486-488, the following corrections are made:–

By deleting Item 3 and inserting the following in lieu thereof:–

"3. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third column in lieu thereof.

Column 1	Column 2	Column 3
	$	$
4.5.1	43.25	44.59
4.10.1(h)		
(i)	12.97	13.37*(1)*
(ii)	19.46	20.06*(2)*
(iii)	22.71	23.41*(3)*"

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*12.26*	*12.64*	*12.97*
(2)	*18.40*	*18.97*	*19.46*
(3)	*21.46*	*22.13*	*22.71*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

DISABILITY SUPPORT WORKERS AWARD – STATE

(Gazette, 3 July 1998)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 20, pages 538-539, the following corrections are made:–

In Item 2:–

By inserting in columns 1, 2 and 3 respectively, "4.6.1", "$37.03" and "$38.18"*(1).*

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*N/A*	*36.09*	*37.03*

Dated this fourth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

ELECTRICITY SUPPLY INDUSTRY EMPLOYEES' AWARD – STATE

(Gazette, 12 January 1996)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 20, pages 560-563, the following corrections are made:–

In Item 2:–

(a) by inserting in columns 1, 2 and 3 respectively "3.25", "90c (appearing 4 times)" and "90c (appearing 4 times)" *(1)*;
(b) by inserting in columns 1, 2 and 3 respectively "3.26", "90c" and "90c" *(1)*
(c) by inserting in columns 1, 2 and 3 respectively "3.29", "35.70c" and "36.80c" *(2)* ;and
(d) by deleting from columns 2 and 3 the amounts of "97.3c" and "$1.003" opposite clause 3.32(18) and inserting the amounts of "97c" and "$1.00" *(3)* respectively in lieu thereof.

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*90c*	*90c*	*90*
(2)	*33.75c*	*34.80c*	*35.70c*
(3)	*92c*	*95c*	*97c*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

GARAGE AND SERVICE STATION ATTENDANTS' AWARD – STATE (EXCLUDING SOUTH-EASTERN DISTRICT)

Gazette, 8 November 1986)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 20, pages 587-588, the following corrections are made:–

In Item 3:–

By inserting in clause 7(2) in columns 2 and 3 the amounts of "$4.30" and "$4.40" *(1)* respectively.

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 3.11.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*		
(1)	*3.90*	*4.10*	*4.20*	*4.30*

Dated this fifth day of December 2001

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

HOSPITAL EMPLOYEES AWARD – MOUNT OLIVET HOSPITAL – BRISBANE

(Gazette, 1 November 1986)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 20, pages 605-606, the following correction is made:–

In Item 2:–

By inserting in columns 1, 2 and 3 respectively, "9(7)", "$2.50" and "$2.60"*(1).*

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*2.30*	*2.40*	*2.50*

Dated this fourth day of December, 2001.

E. EWALD,
Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

HOTELS, RESORTS AND ACCOMMODATION INDUSTRY AWARD – SOUTH-EASTERN DIVISION

(Gazette, 10 July 1979)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 20, pages 610-611, the following correction is made:–

In Item 2:–

By deleting from where they appear for the second time in clause 5(5) and in clause 7(2)(a) and 7(2)(b) the amounts of "$1.8705" and "$1.9285" and inserting the amounts of "$1.87" and "$1.93"*(1)* respectively in lieu thereof.

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*1.77*	*1.82*	*1.87*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

LOCAL AUTHORITIES (EXCLUDING BRISBANE) AND MAIN ROADS, ETC., AWARD – STATE

(Gazette, 10 May 1986)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 20, pages 622-626, the following corrections are made:–

In Item 2:–

(a) by inserting in columns 1, 2 and 3 respectively "4(11)", "$9.53" and "$9.83" *(1);*

(b) by deleting from columns 2 and 3 respectively the amounts of "$15.60" and "$16.10" *(2)* opposite clause 45(6), (7) and (8).

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*9.01*	*9.29*	*9.53*
(2)	*N/A*	*N/A*	*N/A*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

MILK AND CREAM DISTRIBUTORS AND VENDORS' AWARD – NORTHERN AND MACKAY DIVISIONS

(Gazette, 30 June 1984)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 23 August 2001, Vol. 167, No. 20, page 637, the following corrections are made:–

In Item 2:–

By inserting in columns 1, 2 and 3 respectively "6(1)", "87c" and "90c" *(1)*.

CORRECTED RATES:–	*As from the commencement Of the first pay period after 1.9.97*	*As from 21.10.97*	*As from 1.9.98*	*As from 1.9.99*
(1)	*79c*	*82c*	*85c*	*87c*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

NURSES' AGED CARE INTERIM AWARD – STATE

(Gazette, 11 August 1994)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 30 August 2001, Vol. 167, No. 22, pages 709-711, the following correction is made:–

In Item 1:–

By deleting from the proviso of clause 6(1) the amount of "$869.90" and inserting the amount of "$899.90" in lieu thereof.

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

PATHOLOGY (PRIVATE PRACTICES) AWARD – STATE

(Gazette, 2 May 1997)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 30 August 2001, Vol. 167, No. 22, pages 729-731, the following corrections are made:–

1. By inserting "1." before " In Part 5:–"

2. By inserting an Item 2 as follows:–

"2. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third column in lieu thereof.

Column 1	Column 2	Column 3
5.4.1(a)	$	$
(i)	10.81	11.15*(1)*
(ii)	21.62	22.29*(2)*
(iii)	43.25	44.59*(3)*”

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*10.22*	*10.54*	*10.81*
(2)	*20.44*	*21.07*	*21.62*
(3)	*40.88*	*42.15*	*43.25*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

###

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

PHARMACEUTICAL EMPLOYEES AWARD – PUBLIC HOSPITALS – STATE

(Gazette, 13 December 1978)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 30 August 2001, Vol. 167, No. 22, pages 733-734, the following corrections are made:–

By inserting an Item 2 as follows:–

“2. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third column in lieu thereof.

Column 1	Column 2	Column 3
	$	$
9A(1)(i)	11.99	12.36*(1)*
(ii)	7.68	7.92*(2)*
(iii)	6.10	6.29*(3)*”

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*11.34*	*11.69*	*11.99*
(2)	*7.26*	*7.49*	*7.68*
(3)	*5.77*	*5.95*	*6.10*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

###

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

PORT AUTHORITIES AWARD – STATE

(Gazette, 4 January 1992)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 30 August 2001, Vol. 167, No. 22, pages 741-743, the following correction is made:–

By inserting in columns 1, 2 and 3 of Item 7 respectively “Appendix 1 Cairns Port Authority 5”, “$5.14” and “$5.30”*(1)*.

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*4.86*	*5.01*	*5.14*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

PORTS CORPORATION EMPLOYEES AWARD – STATE

(Gazette, December 1993)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 30 August 2001, Vol. 167, No. 22, pages 746-747, the following corrections are made:–

1. By inserting the figure "1." before the preamble to the amendment.

2. By inserting an Item 2 as follows:–

"2. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third column in lieu thereof.

Column 1	Column 2	Column 3
3.5(4)	$	$
(a)	13.25	13.66*(1)*
(b)	8.59	8.86*(2)*
(c)	6.76	6.97*(3)*"

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*12.52*	*12.91*	*13.25*
(2)	*8.12*	*8.37*	*8.59*
(3)	*6.39*	*6.59*	*6.76*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

PRIVATE HOSPITAL NURSES' AWARD – STATE

(Gazette, 24 April 1998)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 30 August 2001, Vol. 167, No. 22, page 757, the following correction is made:–

By deleting from column 1 the references "3.5.2(a)", "(b)" and "(c)" and inserting the references "3.5.2(a)(i)", "(ii)" and "(iii)" in lieu thereof.

Dated this fourth day of December, 2001.

E. EWALD,
Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

PROFESSIONAL AND TECHNICAL EMPLOYEES AWARD – PUBLIC HOSPITALS, QUEENSLAND AND THE QUEENSLAND RADIUM INSTITUTE

(Gazette, 18 June 1988)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 30 August 2001, Vol. 167, No. 22, pages 768-780, the following correction is made:–

1. In Item 4:–

By deleting from clause 16(1) the Per Fortnight Rates of "$1,031.00" and "$1,051.00" from "Division II" and inserting the rates of "$1,131.00" and "$1,151.00" respectively in lieu thereof.

2. By inserting an Item 9 as follows:–

"9. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third column in lieu thereof.

Column 1	Column 2	Column3
	$	$
43(1)(a)	12.97	13.37 *(1)*
(b)	8.43	8.69 *(2)*
(c)	6.59	6.79 *(3)*"

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*12.26*	*12.64*	*12.97*
(2)	*7.97*	*8.22*	*8.43*
(3)	*6.23*	*6.42*	*6.59*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

SCHOOL DENTAL THERAPISTS – DEPARTMENT OF HEALTH – AWARD

(Gazette, 30 May 1987)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 30 August 2001, Vol. 167, No. 23, page 837, the following corrections are made:–

In Clause 6:–

(a) by deleting from the classification "School Dental Therapist – Upon Appointment" the amount of "$992.00" and inserting the amount of "$922.00" in lieu thereof; and

(b) by deleting from the classification "District School Dental Therapist – Upon Appointment" the amount of "$1,030.00" and inserting the amount of "$1,032.00" in lieu thereof.

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

SENIOR ADMINISTRATIVE NURSING STAFF AWARD – DIVISION OF PSYCHIATRIC SERVICES AND EVENTIDES, DEPARTMENT OF HEALTH

(Gazette, 28 March 1987)

AMENDMENT
(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 30 August 2001, Vol. 167, No. 23, pages 840-841, the following corrections are made:–

In Item 1:–

(a) by deleting the amount of "$1,631.00" for "Level 3– Nursing Supervisor (engaged as at 09.12.90)" and inserting "$1,541.00"*(1)* in lieu thereof;

(b) by deleting the amount of "$1,659.70" for "Level 3 – Nurse Educator (With Diploma) (Existing Employees)" and inserting "$1,569.70" *(2)* in lieu thereof; and

(c) by deleting the amount of "$1,537.50" for "Level 2 – Nurse Educator (Without Diploma) (Existing Employees)"and inserting "$1,447.50" *(3)* in lieu thereof.

CORRECTED RATES:–	*As from the commencement of the first pay period after 1.9.97*	*As from 1.9.98*	*As from 1.9.99*
	$	*$*	*$*
(1)	*1,541.00*	*1,541.00*	*1,541.00*
(2)	*1,569.70*	*1,569.70*	*1,569.70*
(3)	*1,447.50*	*1,447.50*	*1,447.50*

Dated this fifth day of December, 2001.

E. EWALD,
Registrar.

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Subject:
Author: Queensland Industrial Relations Commission
Keywords:
Comments:
Creation Date: 21/01/2002 2:44:00 PM
Change Number: 3
Last Saved On: 17/01/2008 9:57:00 AM
Last Saved By: TorrenVM
Total Editing Time: 1 Minute
Last Printed On: 17/01/2008 9:57:00 AM
As of Last Complete Printing
Number of Pages: 20
Number of Words: 13,631 (approx.)
Number of Characters: 69,521 (approx.)