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No. 17

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	Certified on and certificate issued	Cancelling
CA271/04	Autism Queensland Inc – Employees – Certified Agreement 2004	30/06/04	CA235/99, CA216/01, CA405/01 and CA390/02
CA274/04	West Moreton Aged Homes Council – ASU – Certified Agreement (No. 1) 2004	05/07/04	
CA275/04	Blue Care – ASU – Certified Agreement (No. 1) 2004	05/07/04	
CA296/04	West Moreton Aged Homes Council – QPSU – QSU – Queensland Enterprise Bargaining – Certified Agreement	13/07/04	CA574/01
CA297/04	Apple Marketing Group Pty Limited – Certified Agreement 2004	22/07/04	CA191/01
CA304/04	BHP Billiton Cannington Port Operations – Certified Agreement 2004	26/07/04	CA450/00
CA317/04	Kaloma Home for the Aged Support Workers – Certified Agreement 2003	27/07/04	
CA332/04	Clem Jones Home – Certified Agreement	29/07/04	
CA303/04	McLean Farms (Egg Packing Plant) – Certified Agreement 2004	30/07/04	
CA311/04	Eos Civil Solutions (a business unit of Redcliffe City Council) Enterprise Bargaining – Certified Agreement 2004	30/07/04	CA297/02
CA314/04	Parmalat Australia Ltd (Brisbane Operations) – Certified Agreement	30/07/04	CA488/00 and CA305/02
CA315/04	Ipswich Girls' Grammar School – Enterprise Bargaining – Certified Agreement 2004	30/7/04	CA166/95 and CA729/00
CA272/04	Stradbroke Ferries Pty Ltd 2003 – Certified Agreement	3/8/04	CA95/01

No/s	Title	Certified on and certificate issued	Cancelling
CA291/04	Mallett – Certified Agreement	03/08/04	
CA333/04	Rivermount Education Limited – Certified Agreement 2004	03/08/04	CA11/02
CA338/04	QR Infrastructure Services Resurfacing Teams – Certified Agreement 2004	3/8/04	CA164/03
CA339/04	Mackay City Council State Award – Certified Agreement	03/08/04	CA69/02
CA340/04	Cairns City Council State Award Employees – Certified Agreement 4	03/08/04	CA385/02
CA342/04	NDL Transport Pty Ltd – Certified Agreement 2004	3/8/04	
CA344/04	Sita Australia Pty Ltd Brisbane Maintenance Personnel – Certified Agreement 2004	4/8/04	CA251/01
CA347/04	Peter Michael Cloherty t/a PM Cloherty Building Contractors – Certified Agreement	4/8/04	
CA348/04	Schoenauer Pty Ltd – Certified Agreement	4/8/04	CA423/00
CA349/04	Rosenlund Contractors Pty Ltd – Certified Agreement	4/8/04	CA442/01

G.D. SAVILL,
Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s.125 – application for a new award

**The Australian Workers' Union of Employees, Queensland AND Torres Strait
Regional Authority on behalf of various Councils and Another (No. B808 of 2004)**

**TORRES STRAIT ISLANDER COMMUNITIES – COMMUNITY DEVELOPMENT EMPLOYMENT
PROJECTS (TORRES STRAIT) AWARD – STATE 2004**

COMMISSIONER BLADES

4 August 2004

NEW AWARD

THIS MATTER coming on for hearing before the Commission at Brisbane on 6 July and 3 August 2004, this Commission awards as follows as from 3 August 2004:

**TORRES STRAIT ISLANDER COMMUNITIES – COMMUNITY DEVELOPMENT EMPLOYMENT
PROJECTS (TORRES STRAIT) AWARD – STATE 2004**

PART 1 – APPLICATION AND OPERATION

1.1 Title

This Award is known as the Torres Strait Islander Communities – Community Development Employment Projects (Torres Strait) Award – State 2004.

1.2 Arrangement

Subject Matter Clause No.

PART 1 – APPLICATION AND OPERATION

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No provisions inserted in this Award relevant to this Part.

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No provisions inserted in this Award relevant to this Part.	
PART 9 – TRAINING AND RELATED MATTERS	
No provisions inserted in this Award relevant to this Part.	
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1.3 Award coverage

Notwithstanding any other State award, this Award applies throughout the Torres Strait Islands of Queensland and certain areas of the Cape York Peninsula, namely:

Bamaga Community;
 Seisia Community;
 Badu Island;
 Boigu Island;
 Coconut Island;
 Rennel Island;
 Darnley Island;
 Stephen Island;
 Dauan Island;
 Hammond Island;
 Moa Island (Kubin Community and St. Paul's Community);
 Mabuiaig Island;
 Mer (Murray) Island;
 Dauar Island;
 Saibai Island;
 Warraber Island;
 Yam Island;
 Yorke Island;
 Horn Island;
 Thursday Island;
 Warrior Island; and
 Nagir Island.

And, in addition, any community of the Torres Strait or of the Cape York Peninsula which, may in the future, operate a CDEP scheme funded by the Torres Strait Regional Authority (TSRA).

1.4 Parties bound

This Award is legally binding upon the CDEP participants as prescribed by clause 1.3 and their Employers, and The Australian Workers' Union of Employees, Queensland and its members.

1.5 Definitions

1.5.1 "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.

- 1.5.2 "CDEP" means the Community Development Employment Projects, a program funded by the Torres Strait Regional Authority (TSRA) which provides Torres Strait Islander people with an alternative to unemployment benefits. Participation in the CDEP scheme is voluntary and participants are able to leave at any time, without notice.
- 1.5.3 "Commission" means the Queensland Industrial Relations Commission.
- 1.5.4 "Community" means a Torres Strait community within coverage of this Award.
- 1.5.5 "Employer" means those employers who employ CDEP participants and operate with the Torres Strait Islands of Queensland and certain areas as identified in clause 1.3.
- 1.5.6 "Participant" means a person employed under the CDEP scheme.
- 1.5.7 "Union" means The Australian Workers' Union of Employees, Queensland.
- 1.5.8 "Work" means whatever activities are determined by the employer to be legitimate for attracting payment of a CDEP wage, may be less structured than in other workplaces in view of cultural differences and includes participation in ceremonial business.

1.6 Date of operation

This Award takes effect from 3 August 2004.

PART 2 – FLEXIBILITY

No provisions inserted in this Award relevant to this Part.

PART 3 – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Grievance and dispute settling procedure

The matters to be dealt with in this procedure shall include all grievances or disputes between a participant and the Community Council in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedures shall apply to a single participant or to any number of participants.

- 3.1.1 In the event of a participant having a grievance or dispute the participant shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the participant/s may bypass this level in the procedure.
- 3.1.2 If the grievance or dispute is not resolved under clause 3.1.1, the participant or the participant's representative may refer the matter to the CDEP Coordinator or the Community Council. Such discussion should, if possible, take place within 24 hours after the request by the participant or the participant's representative.
- 3.1.3 If the grievance involves allegations of unlawful discrimination by a supervisor the participant may commence the grievance resolution process by reporting the allegations directly to the CDEP Coordinator or the Community Council or alternatively the CDEP participant may proceed directly to the process outlined at clause 3.1.4.
- 3.1.4 If, after discussion between the parties, or their nominees mentioned in clause 3.1.2, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement, then notification of the existence of the dispute may be given to the Commission in accordance with the provisions of the Act.
- 3.1.5 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine risk and/or health and safety issue.
- 3.1.6 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed, provided that clause 3.1.5 shall not prejudice the rights or duties of the participant or community council.
- 3.1.7 All parties shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.1.8 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.1.9 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.
- 3.1.10 Where participants are involved in a dispute in a workplace that is covered by another State or Federal award or certified agreement, they, or the employer in that workplace may elect to use the dispute settling procedure in that award or certified agreement.

PART 4 – EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

4.1 Employment categories

4.1.1 For the purposes of this Award, participants are classified into 2 categories:

- Category A participants work a specified number of hours per week as determined by the relevant community council or organisation.
- Category B participants work extra hours in addition to those worked by Category A participants. These hours may or may not be regular but will be paid the CDEP participant wage directly as if it were a subsidy. The number of these extra hours is determined by the relevant community council or organisation.

4.1.2 Category B participants will be treated as though they are covered by any State or Federal award or certified agreement governing the workplace where their work is actually undertaken. Where no State or Federal awards or certified agreements apply, this Award will govern their terms and conditions of employment.

4.2 Anti-discrimination

4.2.1 It is the intention of the parties to this Award to prevent and eliminate discrimination, as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as amended from time to time, which includes:

- (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;
- (b) sexual harassment; and,
- (c) racial and religious vilification.

4.2.2 Accordingly, in fulfilling their obligations under the grievance and dispute settling procedure in clause 3.1, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

4.2.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

4.2.4 Nothing in clause 4.2 is to be taken to affect:

- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;
- (b) an employee, Employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

PART 5 – WAGES AND WAGE RELATED MATTERS

5.1 Rates of pay

5.1.1 Where Category A participants are required to work a specified number of hours they are entitled to payment for the time worked at an hourly rate no less than 1/38th of the weekly Queensland Minimum Wage as determined by the Commission from time to time.

5.1.2 Category B participants who work beyond the specified number of regular hours per week are entitled to payment for all hours worked at the rate prescribed by the relevant State or Federal awards or certified agreements governing the classifications/workplace where their work is actually undertaken. They will continue to receive direct payment of their CDEP entitlement. This amount will be treated as if it were a subsidy and the equivalent deducted from the relevant weekly rate of pay. Where there are no State or Federal awards or certified agreements governing the workplace where their work is actually undertaken, the minimum hourly rate and conditions will apply as for Category A participants.

5.1.3 In all circumstances the hourly divisor (1/38th) shall be applied to the weekly rate of pay and pay deducted for hours not worked that are not subject to approved leave.

5.2 Superannuation

All CDEP participants are subject to the provisions outlined in the current Superannuation Guarantee guidelines issued by the Australian Taxation Office.

PART 6 – HOURS OF WORK

6.1 Hours of work

6.1.1 Communities operating CDEP schemes will decide the hours of work that participants are actually required to perform work in order to receive pay.

6.1.2 Communities shall determine a specified minimum number of regular hours per week per participant.

PART 7 – LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

7.1.1 Entitlement

- (a) CDEP participants are entitled to annual leave as prescribed by the Act as amended from time to time.

7.1.2 In addition to those entitlements prescribed in 7.1.1, the following shall apply:

- (a) Annual leave shall be exclusive of public holidays and Mabo Day.
- (b) An employer may decide to close down over the Christmas period and to require participants to take annual leave at that time. An employer must give at least 4 weeks notice of such a requirement.
- (c) Category A participants are entitled to payment for a period of annual leave at the rate specified in clause 5.1.
- (d) Category B participants are entitled to payment for a period of annual leave based on the average number of weekly hours worked in the 3 months immediately prior to taking leave.

- (e) Category A participants are not entitled to a leave loading but may receive an annual bonus determined at the enterprise level.
- (f) Category B participants are entitled to the leave provisions contained in any State or Federal award or certified agreement governing their workplace, rather than the arrangements applying to other (category A) participants. This does not preclude them from receiving the same annual bonus. Where there is no other Federal or State award or certified agreement applying, Category B participants will be subject to the leave provisions that apply to Category A participants.

7.2 Sick leave

- 7.2.1 Category A participants absent from work because of personal illness or incapacity due to any cause are entitled to 10 days sick' leave per annum.
- 7.2.2 Participants are entitled to payment for a period of sick leave at the rate of pay they would otherwise have earned if not on sick leave.
- 7.2.3 Participants are not entitled to paid sick leave for any absence covered by workers' compensation or sickness benefits.
- 7.2.4 Participants who are unable to attend work due to sickness must inform their supervisor as soon as practicable on the day of the absence and must state the expected duration of their absence. This principle continues to apply in the event that their absence extends beyond the period previously advised.
- 7.2.5 Participants who fail to notify their supervisor of their absence due to sickness on the day of the absence in accordance with 7.2.4 are not entitled to payment for that day.
- 7.2.6 Participants may be required to provide reasonable proof that they were unable to attend for duty on account of sickness on the days for which they claim sick leave.
- 7.2.7 Reasonable proof includes:
 - (a) in locations where a participant can be reasonably expected to obtain a medical certificate: a medical certificate.
 - (b) in locations where it is unreasonable to expect a participant to obtain a medical certificate: a statutory declaration or note from a registered nurse.
- 7.2.8 Category B participants will be subject to the sick leave provisions contained in any State or Federal award or certified agreement governing their workplace, rather than the arrangements applying to other participants. Where there is no other State or Federal award or certified agreement applying, they will be subject to whatever sick leave provisions apply to Category A participants.

7.3 Bereavement leave

- 7.3.1 Category A and B participants are entitled to bereavement leave on the death of a family or household member. The duration and payment of this leave is to be negotiated between the participant(s) and the employer.

7.4 Long service leave

- 7.4.1 Participants are entitled to long service leave in accordance with the Act as amended from time to time.
- 7.4.2 Accrued long service leave entitlements are not portable between CDEP schemes operating in different communities.

7.5 Family leave

The provisions of the Family Leave Award apply to and are deemed to form part of this Award.

- 7.5.1 It is to be noted that:
 - (a) part-time work can be performed by agreement in the circumstances specified in the Family Leave Award;
 - (b) a copy of the Family Leave Award is required to be displayed in accordance with section 697 of the Act.
- 7.5.2 The Family Leave Award also provides for the terms and conditions of leave associated with:
 - (a) Maternity leave
 - (b) Parental leave
 - (c) Adoption leave
 - (d) Special responsibility leave for the care and support of the employee's immediate family or household.

7.6 Public holidays

- 7.6.1 All work done by any employee on:
 - the 1st January;
 - the 26th January;
 - Good Friday;
 - Easter Saturday (the day after Good Friday);
 - Easter Monday;
 - the 25th April (Anzac Day);
 - Mabo Day;
 - The Birthday of the Sovereign;
 - Christmas Day;
 - Boxing Day; or
 - any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday

shall be paid for at the rate of double time and a-half with a minimum of 4 hours.

7.6.2 *Labour Day*

All employees covered by this Award shall be entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under the *Holidays Act 1983*, to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day, and if any employee concerned actually works on Labour Day, such employee shall be paid a full day's wage for that day and in addition a payment for the time actually worked at one and a-half times the ordinary rate prescribed for such work with a minimum of 4 hours.

7.6.3 *Annual show*

All work done by employees in a district specified from time to time by the Minister by notification published in the *Gazette* on the day appointed under the *Holidays Act 1983*, to be kept as a holiday in relation to the annual agricultural, horticultural or industrial show held at the principal city or town as specified in such notification of such district shall be paid for at the rate of double time and a-half with a minimum of 4 hours.

In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and Employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

7.6.4 *Double time and a-half*

For the purposes of clause 7.6, where the rate of wages is a weekly rate, "double time and a-half" means one and a-half days wages in addition to the prescribed weekly rate, or *pro rata* if there is more or less than a day.

7.6.5 All time worked on any of the holidays mentioned in clauses 7.6.1, 7.6.2 and 7.6.3 outside the ordinary starting and ceasing times for the day of the week on which such holiday falls shall be paid for at double the rate prescribed by the Award for such time when worked outside the ordinary starting and ceasing times on an ordinary working day.

7.6.6 *Stand-down over the Christmas period*

Any employee, with 2 weeks or more of continuous service, whose employment has been terminated by the Employer or who has been stood-down by the Employer during the month of December, and who is re-employed in January of the following year, shall be entitled to payment at the ordinary rate payable to that employee when they were dismissed or stood-down, for any one or more of the following holidays, namely, Christmas Day, Boxing Day and the 1st January.

7.6.7 Where works are closed down at the Easter period, payment shall be made for the following holidays at ordinary rates to employees who have been employed for a period of not less than 3 months:

Good Friday; and
Easter Monday:

Provided that the qualification of 3 months prior employment shall not apply to deprive an employee of payment for Good Friday and Easter Monday where the period between Christmas and Easter is less than 3 months, if such employee has been continuously engaged between Christmas and Easter and is re-engaged on re-opening the works after Easter. Temporary breaks through wet weather shall not be deemed to break the continuity of employment.

7.6.8 When the ordinary work cycle provides for a rostered day off and a public holiday falls on that day, the rostered day off shall be moved to a day mutually agreed between the Employer and the employees concerned.

7.6.9 *Substitution of holidays*

Where there is agreement between the majority of employees concerned and the Employer and subject to statutory limitations, other ordinary working days may be substituted for the public holidays specified in clause 7.6:

Provided that, where an employee is subsequently required to work on such substituted day, the employee shall be paid the rate applicable for the holiday that has been substituted.

7.6.10 *Employees whose ordinary hours include work on a Saturday or Sunday*

In the case of employees who do not ordinarily work Monday to Friday of each week i.e. whose ordinary hours include work on a Saturday or Sunday such employees shall be entitled to public holidays as follows:

- (a) A full-time employee shall be entitled to either payment for each public holiday or a substituted day's leave.
- (b) A part-time employee shall be entitled to either payment for each public holiday or a substituted day's leave provided that the part-time employee would have been ordinarily rostered to work on that day had it not been a public holiday.
- (c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day's leave.
- (d) Where Christmas Day falls on a Saturday or a Sunday and the public holiday is observed on another day an employee required to work on Christmas Day (i.e. 25 December) shall be paid at the rate of double time if it is a Saturday and double time and a-half if it is a Sunday.
- (e) Nothing in clause 7.6.9 confers a right to any employee to payment for a public holiday as well as a substituted day in lieu.

PART 8 – TRANSFERS, TRAVELLING AND WORKING AWARD FROM USUAL PLACE OF WORK

No provisions inserted in this Award relevant to this Part.

PART 9 – TRAINING AND RELATED MATTERS

No provisions inserted in this Award relevant to this Part.

PART 10 – OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES

No provisions inserted in this Award relevant to this Part.

PART 11 – AWARD COMPLIANCE AND UNION RELATED MATTERS**Preamble**

Clauses 11.1 and 11.2 replicate legislative provisions contained within the Act. In order to ensure the currency of existing legal requirements parties are advised to refer to sections 366, 372 and 373 of the Act as amended from time to time.

11.1 Right of entry**11.1.1 Authorised industrial officer**

- (a) An “authorised industrial officer” is any Union official holding a current authority issued by the Industrial Registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

11.1.2 Entry procedure

- (a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:
 - (i) the authorised industrial officer alerts the Employer or other person in charge of the workplace to their presence; and
 - (ii) shows their authorisation upon request.
- (b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer establishes that the Employer or other person in charge is absent.
- (c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.
- (d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

11.1.3 Inspection of records

- (a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
 - (i) is ineligible to become a member of the Union; or
 - (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
 - (iii) has made a written request to the Employer that the employee does not want that employee’s record inspected.
- (c) The authorised industrial officer may make a copy of the record, but cannot require any help from the Employer.
- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

11.1.4 Discussions with employees

An authorised industrial officer is entitled to discuss with the Employer, or a member or employee eligible to become a member of the Union:

- (a) matters under the Act during working or non-working time; and
- (b) any other matter with a member or employee eligible to become a member of the Union, during non-working time.

11.1.5 Conduct

An authorised industrial officer must not unreasonably interfere with the performance of work in exercising a right of entry.

11.2 Time and wages record

11.2.1 An Employer must keep, at the place of work in Queensland, a time and wages record that contains the following particulars for each pay period for each employee, including apprentices and trainees:

- (a) the employee’s award classification;
- (b) the Employer’s full name;
- (c) the name of the award under which the employee is working;
- (d) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks;
- (e) a weekly, daily or hourly wage rate - details of the wage rate for each week, day, or hour at which the employee is paid;
- (f) the gross and net wages paid to the employee;
- (g) details of any deductions made from the wages; and
- (h) contributions made by the Employer to a superannuation fund.

11.2.2 The time and wages record must also contain:

- (a) the employee’s full name and address;
- (b) the employee’s date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the Employer;
- (e) if appropriate, the date when the employee ceased employment with the Employer; and
- (f) if a casual employee’s entitlement to long service leave is worked out under section 47 of the Act – the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The Employer must keep the record for 6 years.

11.2.4 Such records shall be open to inspection during the Employer’s business hours by an inspector of the Department of Industrial Relations, in accordance with section 371 of the Act; or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

11.3 Award posting

The Employer shall ensure that an up to date copy of this Award is readily available for perusal by employees.

11.4 Union encouragement

Preamble

Clause 11.4 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

11.4.1 *Documentation to be provided by employer*

At the point of engagement, the Employer shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Commission, a copy of which is to be kept on the premises of the Employer in a place readily accessible by the employee.

The document provided by the Employer shall also identify the existence of a Union encouragement clause in this Award.

11.4.2 *Union delegates*

Union delegates and job representatives have a role to play within a workplace. The existence of accredited Union delegates and/or job representatives is encouraged.

The Employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

11.4.3 *Deduction of union fees*

The Employer shall, on the request in writing of any employee, pay to a Union nominated by the employee out of the money due to such employee in respect of wages, the annual contribution of such employee as a member of that Union.

Dated 4 August 2004.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Operative Date: 3 August 2004
Released: 6 August 2004

#####

INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 346 – application for extension of time

Kevin Alva Mayo AND Q-COMP (No. C35 of 2004)

PRESIDENT HALL

5 August 2004

DECISION

On 22 July 2002 WorkCover rejected an application for compensation under the then *WorkCover Queensland Act 1996*. The unsuccessful applicant, Kevin Alva Mayo, sought a statutory review of the Decision. By a decision of 6 December 2002 Q-COMP confirmed the decision of WorkCover. Mr Mayo, as he was entitled to do, appealed to the Industrial Magistrates Court. By decision of 30 April 2004 the Industrial Magistrate dismissed the appeal. Mr Mayo now seeks to appeal to this Court. His problem is that he is out of time.

By s. 346(1) of the *Industrial Relations Act 1999* this Court has a discretion to extend the twenty-one day time limit fixed by s. 345(1). It must always be borne in mind that s. 346(1) is a recognition by the legislature that in the ordinary case justice will best be served if the rule be insisted upon that appeals must be lodged within twenty-one days of the adverse decision. An applicant for an extension of time must make out a case for the grant of indulgence. However, one must not lose sight in the circumstance that the legislature has also vested the Court with a discretion which is to be exercised to avoid injustice in particular cases.

This is just the sort of case in which an extension of time should be granted. The delay was comparatively brief, viz thirteen days. There is an entirely satisfactory explanation.

The practitioner who acted for Mr Mayo at first instance had (incorrectly) informed Mr Mayo that the limitation period was twenty-eight days. Because Mr Mayo was in difficult financial circumstances, and reliant upon casual employment to support himself and his family, he took advantage of the supposed time limit of twenty-eight days to accumulate moneys to fund the appeal. By the time counsel had access to the brief, Mr Mayo was already out of time. The appeal being by way of rehearing on the record (subject to a discretion to admit additional evidence), see s. 561(3) of the *Workers Compensation Rehabilitation Act 2003*, there is no prospect of prejudice to the respondent. There is nothing in the applicants conduct to warrant refusal to the application. From the point at which Mr Mayo’s legal advisors became aware that he was out of time, the matter was advanced with commendable alacrity.

The proposed appeal and the application for an extension of time should have been filed on 1 June 2004. The delay until 4 June 2004 is because of the understandable reluctance of the Industrial Magistrates Registry at Townsville to accept an appeal which is out of time and/or an application which is not itself an appeal. Whilst the applicant’s prospects of success on the proposed appeal are inherently a relevant matter, there is no justification for delaying an application such as this in order to investigate prospects of success which are quite incapable of assessment in a summary way.

In my view it would be quite oppressive to refuse the application for extension of time. Indeed, the respondent, which appeared by counsel to assist the Court, does not suggest that this is a case in which an extension of time should be refused.

It was for those reasons that on the morning of 3 August 2004 I granted Mr Mayo an extension of time until 4 June 2004.

Dated 5 August 2004.

D.R. HALL, President.

Appearances:
Mr B. Shaw instructed by Alex Nelson and Associates Solicitors, for the Applicant.
Mr P. Major directly instructed by Q-COMP for the Respondent.

Released: 5 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Kevin James Smith AND Mackay Business Brokers Pty Ltd (No. 2) (No. B457 of 2004)

PRESIDENT HALL
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER BLADES

3 August 2004

DECISION

By a decision of 9 June 2004, now reported at 176 QGIG 317, we dismissed an application for leave to appeal against a decision of a Commissioner sitting alone. We reserved all questions about costs. The successful Respondent subsequently sought costs.

By a Directions Order of 23 June 2004 it was ordered:

- “1. That the Respondent provide to the Appellant*, and lodge in the Industrial Registry, written submissions (2 copies of not more than 10 pages) by **4.00pm on 28 June 2004.**
- 2. That the Appellant* provide to the Respondent, and lodge in the Industrial Registry, written submissions (2 copies of not more than 10 pages) by **4.00 pm on 15 July 2004.**
- 3. That the Respondent provide to the Appellant*, and lodge in the Industrial Registry, any written submissions (2 copies of not more than 10 pages) in reply by **4.00 pm on 22 July 2004.**
- 4. That any other Directions stand over.”.

[*The reference to Appellant is an error. The noun Applicant should have been used]

The Respondent failed to comply with the order at point 3.

If it were simply a matter of the Respondent declining the opportunity to reply to the Applicant’s submissions, the omission would have no consequence. However, the Respondent did wish to take up the opportunity. What happened was that because of an information technology problem the submissions, which had been settled by counsel prior to 22 July 2004, were delivered and lodged 2 working days late.

In those circumstances the Applicant seeks an order dismissing the application for costs pursuant to Rule 42 of the *Industrial Relations (Tribunal) Rules 2000*.

The power to dismiss at Rule 42 is discretionary. It would be extraordinary to dismiss an application for costs where the delay is minimal, where there is no prejudice, where there is a credible explanation and where there is no history of non-compliance. We decline to dismiss the application for costs.

The Respondent accepts that the application for costs must be brought within s. 335 of the *Industrial Relations Act 1999*. The case developed is that the application for leave to appeal was made without reasonable cause because it was recognisable from the outset as a case in which the Applicant had no prospect of success. There is no suggestion of vexation.

One must not rush to judgment on a submission that a case had no prospect of success. Hindsight is a wonderful thing. Knowledge of the outcome of an application equips one with great clarity of mind in retrospectively assessing the applicant’s prospects of success. There is the additional consideration that the very purpose of s. 335 is to ensure that applicants are not deterred by the spectre of an order for costs. One must not weigh prospects of success over-astutely. All of that said, it is our view that this case falls on the wrong side of the line. By the decision of 9 June 2004 we summarised our conclusion as follows:

"In our view the application for leave to appeal should be dismissed both upon the ground that the proposed appeal has no prospect of success and upon the basis that it is not in the 'public interest' (section 342(3)) to permit a litigant to found an appeal upon the inadequacy of the case presented at first instance. For completeness, we note that it would be unconscionable to exercise the discretion at s. 348(2) to allow 'additional evidence' which, by the exercise of a modicum of prudence and diligence, might have been made available and placed before the Commission at first instance."

At 319 we added:

"Secondly, in our view the application was not competent. There was no issue to be raised on the proposed appeal which was not an error of law. Leave to appeal to a Full Bench is not available in such as case, *Walters v B T Equipment Pty Limited* (2002) 169 QGIG 182. The applicant's written submissions seek to avoid that difficulty by contending that there is a difference between an appeal on the ground of denial of natural justice, which is an appeal on the ground of error of law for excessive jurisdiction, and an appeal on the ground of absence of procedural fairness which may not be characterised as an appeal on the ground of error of law or excessive jurisdiction. As a matter of vocabulary the expression 'absence of natural justice' and 'absence of procedural fairness' are interchangeable. Indeed, if anything, the later expression is more fashionable, see Aronson and Dyer, *Judicial Review of Administrative Action*, 2nd ed. At 299 to 300. If the contention is that s. 342 appeals, which by s. 348(1) are by way of rehearing, permit the development of a novel body of soft law, no argument was put to support it."

Quite simply, the Applicant was undone from the very day he filed the application to appeal.

The power triggered by the finding that the application to appeal was made without reasonable cause is a power which is a discretionary power. The section contemplates that a Respondent who establishes that an application was made without reasonable cause may fail to recover costs. However, the circumstances triggering the power are not irrelevant to the exercise of discretion. A Respondent put to the expense of defending an unreasonably made application should not be denied costs without good reason. No such reason has been identified in argument. With respect to the Applicant, his argument is fundamentally a re-agitation of the submission which led the Bench to conclude that "...the proposed appeal has no prospect of success."

We order that the Applicant pay the Respondent's costs of and incidental to the appeal assessed, (if need be), by the Industrial Registrar as if this had been a Supreme Court matter.

Dated 3 August 2004.

D. R. HALL, President.

A. L. BLOOMFIELD, Deputy President.

B. J. BLADES, Commissioner.

Released: 4 August 2004

Appearances:

Mr S. P. Coates instructed by P. K. Lawyers for the Appellant.

Mr K. Watson directly instructed by Bruce Siebenhausen and Associates for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287 – application for declaration of a general ruling
s. 288 – application for declaration of policy

**The Australian Workers' Union of Employees, Queensland AND
Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others
(No. B724 of 2004)**

AND

**Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B744 of 2004)**

STATE WAGE CASE 2004

VICE PRESIDENT LINNANE
DEPUTY PRESIDENT SWAN
COMMISSIONER BLADES

3 August 2004

DECISION

[1] On 5 May 2004 a Full Bench of the Australian Industrial Relations Commission (AIRC) released its decision in the matter of the *Safety Net Review – Wages May 2004* (AIRC PR002004: Giudice J, Ross VP, Lawler VP, Marsh SDP, Lacy SDP, Larkin C and Grainger C). In that decision the Full Bench of the AIRC awarded:

- a safety net adjustment of \$19.00 per week in award rates;
- an increase in the federal minimum wage of \$19.00 per week so that the federal minimum wage is now \$467.40 per week; and
- an increase in allowances that relate to work and service increments.

[2] On 6 May 2004 The Australian Workers' Union of Employees, Queensland (AWU) filed with the Industrial Registry an application (B724 of 2004) which, after amendment seeks:

- an arbitrated wage adjustment of an amount of \$19.00 per week increase in award rates;
- the adjustment of allowances which relate to work or conditions which have not changed and service increments by an amount of 3.5% being the arbitrated wage adjustment calculated as a percentage of the C10 rate in the *Engineering Award – State 2002*; and
- the adjustment of the Queensland Minimum Wage for workers regulated by industrial instruments from \$448.40 per week to an amount of \$467.40 per week for full-time adult employees and for junior, part-time and casual employees, proportionate amounts.

- [3] We assume that the claim for an adjustment of the Queensland Minimum Wage for workers regulated by industrial instruments excludes those regulated by industrial agreements and refer the parties to comments made in the *State Wage Case 2003* Decision to the effect that s. 713(3) of the *Industrial Relations Act 1999* (Act) precludes the Commission from amending an industrial agreement after its term has expired and the term of all industrial agreements has now expired.
- [4] On 11 May 2004 the Queensland Council of Unions (QCU) filed a similar application (B744 of 2004). The QCU application also sought the maintenance, other than the amending of operative dates and the quantum of wage adjustment, of the 2003 Declaration of Policy dealing with the *Statement of Principles*: see (2003) 173 QGIG 1258.
- [5] Both the AWU and the QCU sought to have both applications joined. There was no opposition to that application and both matters were joined.
- [6] On 27 May 2004 we published a Declaration of Intent to satisfy the duty placed upon the Commission by s. 287(3) of the Act. The Declaration of Intent is now reported at (2004) 176 QGIG 154.
- [7] Since the decision of the AIRC the following industrial tribunals have granted similar applications to that before this Full Bench:
- the Western Australian Industrial Relations Commission on 3 June 2004: see 2004 WAIRC 11660;
 - the New South Wales Industrial Relations Commission on 4 June 2004: see [2004] NSWIRComm 148;
 - the South Australian Industrial Relations Commission on 22 June 2004: see [2004] SAIRComm 31; and
 - the Tasmanian Industrial Commission on 23 July 2004.

AWU

- [8] The AWU in its submission urged the Full Bench to adopt the safety net increase awarded by the AIRC. In so doing the Bench was referred to the following comments in the *2000 State Wage Case Decision*:
- “It cannot reasonably be expected that all state economies will at all times perform in the same way. The Australian Industrial Relations Commission takes account of circumstances in all states and is aware of a likelihood that its decision will flow into particular state industrial systems. It is obviously aware also that its awards may marginally impact differently in different states. There will be times when the Queensland economy outperforms other states and *vice versa*. As long as the discrepancies are not large and consistent, we consider that the proper course is to take the broad view and flow the Federal increases into the Queensland system”: see *Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others* (2000) 164 QGIG 372.”.
- [9] In urging the Commission to adopt the findings of the AIRC, the AWU points to the following key findings:
- the AIRC had evidence of the Gross State Product figures before it;
 - the AIRC accepted that there was continuing strong economic growth, particularly in non-farm output throughout 2003;
 - the AIRC accepted that past increases have not proved a disincentive to enterprise bargaining;
 - the Australian economy is expected to continue to perform well with employment continuing to grow and unemployment continuing to reduce further; and
 - the AIRC was not able to discern any negative impact of the safety net adjustment in recent years.
- [10] On the Queensland economy the AWU supported the submissions of the QCU contending that the Queensland economy was sufficiently strong to absorb the increases being sought in its application.

QCU

- [11] The QCU submitted that the deliberations of the AIRC were relevant, particularly in relation to the economic data presented, and referred the Commission to the following commentary by the AIRC:
- “Since our last decision growth in non-farm Gross Domestic Product has remained strong. Farm GDP in the year to December 2003 grew by 21.1 per cent, reflecting the recovery in many areas of the rural economy from the drought conditions which had contributed to major declines in farm production over recent years. GDP overall increased by 3.5 per cent in the year to December 2003. During the last 12 months, private investment continued to grow strongly, with the exception of dwelling investment which is declining from the very high levels recorded in previous years. Imports continued to grow strongly and exports declined slightly. Inflation, as measured by the CPI, was 2.4 per cent in December 2003, down from 3 per cent in December 2002. Unemployment has crept steadily lower, standing at 5.6 per cent in December 2003. Employment, particularly full-time employment, showed encouraging growth. Productivity increased at satisfactory levels. GDP per hour worked in the market sector grew by 3.2 per cent during 2003. Profits remain at high levels. Despite differences between the parties concerning the proper method of measuring the profit share, no one suggested that the share of total factor incomes attributable to profits is a serious obstacle to a safety net adjustment.”.
- [12] And the further statement that:
- “...in relation to the economic outlook, the Australian economy is expected to continue to perform well throughout the 2003-04 financial year with GDP forecast to increase by 3¼ per cent compared with the budget estimate of 3¼ per cent. It is expected that employment will continue to grow and unemployment will reduce further. There are some areas of risk including the potential inflationary effects of the rise in the Australian dollar, the pace at which parts of the rural economy recover from the drought, and the exposure of the manufacturing sector to exchange and interest rate movements and global capacity. Overall there are grounds for optimism that the economy will perform strongly in the immediate future.”: see paragraphs 4 and 6 PR002004 Statement 2004.”.
- [13] Further the QCU points to the AIRC finding that average wages increases for employees under certified agreements were around 4 per cent and that the Wage Cost Index increased 3.6 per cent over the past year. As to the potential negative effects on employment, the QCU relies upon the following comment of the AIRC:

“As the Commission has done in safety net review decisions in recent years, we have had regard to the fact that substantial safety net adjustments may have some negative effects on employment in those sectors of the economy in which a high proportion of the workers are award reliant. The Commission is obliged to take into account the desirability of attaining a high level of employment. While this is an important issue we think that economic conditions generally, including the level of domestic demand, indicate that a significant increase is sustainable on this occasion. The limited arguments and materials advanced in this case for the proposition that past safety net adjustments have had a significant negative effect on employment were unconvincing. We also consider that any potential negative effects must be weighed against the real benefits of safety net adjustments for the employees who depend upon them for increases in wages, particularly low paid employees.”: see paragraph of PR 002004 Statement 2004.

- [14] On the Queensland economy the QCU relies on material published in the Queensland Economic Review and the Queensland Economic Update. Both are Queensland Treasury publications. Queensland Economic Review states that “[t]he Queensland economy continues to perform strongly, with a gross state product increasing by 1.8% in December quarter 2003, to be 3.6% higher over the year. Household consumption and dwelling investment continued to be the main drivers of the growth. This compares well to the national Gross Domestic Product which was 3.5% for 2003” and further, that “[g]rowth in Queensland’s domestic economy in the December quarter continued to be underpinned by strong population growth, with Queensland outperforming the rest of Australia in the terms of quarterly and annual economic growth in the December quarter.”.
- [15] On the issue of employment, the Queensland Economic Review states that “[e]mployment conditions in Queensland strengthened considerably in December quarter 2003, with employment increasing by 1.3% in trend terms, following growth of 0.8% in the September quarter. While remaining more subdued compared with Queensland, employment growth in the rest of Australia also strengthened, recording an increase of 0.6% in the December quarter after recording no growth in the September quarter.”.
- [16] The unemployment rate in Queensland, in the December 2003 quarter, also fell to its lowest quarterly rate in over two decades with a rate of 6.2%. The Queensland Economic Review also points to a continued strengthening of business conditions in the December quarter 2003 following a significant improvement in the previous quarter with business investment growth in Queensland accelerating through the second half of 2003.
- [17] The QCU further submits that the increase sought in the application will not have any significant effects on the Queensland economy given that the Queensland economy is performing well and only approximately 25% of workers in Queensland rely on the Queensland award system. According to the submission of the QCU, a failure to award the wage adjustment sought would disadvantage the lowest paid workers in Queensland and the Commission was urged to grant the applications.

Queensland Government

- [18] The Queensland Government’s position is one of support for both applications. In so doing the Queensland Government relies on the decision and findings of the AIRC, the current state of the Queensland economy, the needs of the low paid and those who remain reliant on awards and/or the Queensland Minimum Wage for their rate of pay, and the provisions of the Act.
- [19] As for the Queensland economy the Queensland Government submits that the key indicators show the economy to be sound and the forecast is for the economy to remain positive. The Queensland Government contends that the economy has the capacity to absorb and sustain the increases sought in the application. In this regard the Queensland Government relies upon the following:
- gross state product in Queensland is expected to grow by 4% in 2003-4, outperforming estimated national growth for the eighth consecutive year;
 - Queensland’s economic growth is forecast to strengthen to 4¼% in 2004-5;
 - household consumption has continued to be one of the key drivers of economic activity in Queensland over the last year and it is expected to grow at a near-record rate in 2003-04. It is expected to grow at 8½% over the year returning to a more sustainable rate of growth of 4¾% in 2004-05;
 - dwelling investment has continued to increase through the first half of 2003-04 and is expected to rise by 12½% over the year. Dwelling investment in 2004-05 is forecast to remain unchanged as compared with a forecast decline of 3% nationally in the same period;
 - business investment in Queensland is expected to once again record solid growth of 6½% in 2003-04 with a forecast of it being buoyed substantially to 8½% in 2004-05 by the improved outlook for world economic growth and the recent increase in world commodity prices;
 - the Brisbane Consumer Price Index inflation is expected to average 3% in 2003-04 with a forecast for it to moderate to 2½% in 2004-05. Inflation in Queensland in 2004-05 is forecast to be higher than the 2% forecast nationally;
 - the key external risks to the economic outlook for Queensland include the sustainability of growth in China and the United States, the possibility of higher oil prices and domestic inflation;
 - the number of persons employed in Queensland, in year-average terms, is estimated to increase by 3¼%, or an increase of almost 60,000 jobs in 2003-04. The average unemployment rate is forecast to fall to 6¼%, the lowest since 1981-82. As economic activity in Queensland switches further from labour-intensive domestic sectors to more capital-intensive export-orientated industries, Queensland’s employment growth is forecast to ease to 2¼% in 2004-05;
 - the ABS Wage Cost Index for Queensland grew by 3.8% over the year to March quarter 2004, compared with 3.6% growth nationally. The Wage Cost Index for the private sector in Queensland grew by 3.7% over the year as compared with that of 3.3% nationally; and
 - the average annualised wage increase for employees covered by agreements registered in the Queensland Industrial Relations Commission in the 2004 March quarter was 3.8% per employee down from 4.4% per employee in the 2003 December quarter.
- [20] According to the Queensland Government submission, the proposed increases will provide a real benefit to the lowest paid employees in Queensland and there is no reason to believe that the difficult financial circumstances of such employees in Queensland would be any different to the evidence accepted by the AIRC in its deliberations.
- [21] The Government estimates that the flow-on of the national wage case increases to Queensland awards would add around 0.3 percentage points to the total wages bill in Queensland and is thus an affordable increase to aggregate wages growth and one that the economy can sustain in light of the generally favourable economic conditions and outlook in Queensland.
- [22] In terms of the legislative provisions the Queensland Government points to the principle object of the *Industrial Relations Act 1999* and in particular to s. 3(b) and (g), s. 273(2)(a) and s. 320 of the Act in its support of the applications.
- AIG**
- [23] The Australian Industry Group Industrial Organisation of Employers (Queensland) (AIG) does not oppose the adoption by this Commission of the arbitrated safety net adjustment awarded by the AIRC in its 2004 Safety Net Review Decision as generally the AIG supports a uniformity of safety net adjustments in the Federal jurisdiction and the various State industrial tribunals.

LGA

[24] The Local Government Association of Queensland Inc (LGA) supports the adoption by this Commission of the substantive terms of the 2004 Safety Net Review decision of the AIRC as it supports consistent safety net award outcomes in the various State and Federal award jurisdictions.

QCCI

[25] The Queensland Chamber of Commerce and Industry Limited Industrial Organisation of Employers (QCCI) supports the granting of a \$10.00 per week wage increase and a 1.9% increase to work related allowances and service increments arguing that such an increase is a fair and reasonable one and in line with community standards. This is a similar position to that adopted by the Australian Chamber of Commerce and Industry before the AIRC.

[26] In support of its position the QCCI relies upon s. 3(a), (b), (f) and (g) and s. 320(3) of the Act.

[27] The QCCI does not disagree with the economic data provided by both the Queensland Government and the QCU however it submits that the Commission should have regard to the fact that any impact of our decision will be greater outside of the Brisbane region as more than 50% of workers affected by the decision work in rural and regional communities.

[28] Whilst the QCCI agrees that the Queensland economy continues to deliver "a solid performance that is anticipated to continue over the next 12 months" it refers the Bench to certain risks associated with the economy that should be considered. These risks were also before the AIRC in its deliberation and include:

- the rate of underemployment;
- the rate of inflation cannot be sustained at such a moderate rate;
- the rise in the price of oil;
- exports have not grown;
- the general rural conditions;
- international competition has intensified;
- the decline in manufacturing jobs; and
- the Australian Bureau of Agriculture and Resource Economic has predicted a tough outlook for agriculture in 2004-05.

[29] The QCCI also urged the Commission to give particular consideration to the following:

- the impact of the applications on small business;
- additional benefits that employees may receive in the period September 2004 to August 2005 including taxation benefits, the changes to the termination, change and redundancy benefits;
- the Queensland drought situation.

QRTSA

[30] The Queensland Retail Traders and Shopkeepers Association, Industrial Organization of Employers (QRTSA) supported the position adopted by the QCCI. In so doing the QRTSA pointed to the significant contribution the retail industry made to employment in Queensland and submitted that there had been a decrease of 0.6% in the number of persons employed in the industry for the year ended February 2004. The QRTSA also referred to the fact that the private sector in Queensland had experienced an increase in wages costs of 3.7% for the period March 2003 to March 2004 which was greater than the 3.3% increase experienced on a national basis.

BIA

[31] The Baking Industry Association of Queensland, Union of Employers (BIA) also supported the position adopted by the QCCI. The BIA asked the Commission to consider the following factors when considering the applications:

- the already tight operating margins of many small industry operators;
- the additional increases in terms of wages experienced in 2003;
- the increased costs associated with the food safety reforms and the more stringent labelling requirements;
- the increases in the cost of raw materials such as sugar and flour; and
- the very nature of the baking industry which is a 24 hour per day, 7 days per week industry.

RLCA

[32] Also supporting the position adopted by the QCCI was The Registered and Licensed Clubs Association of Queensland, Union of Employers (RLCA).

NRA

[33] The National Retail Association Limited, Union of Employers (NRA) opposes any increase to wages and allowances. This is a different approach to that adopted by The Australian Retailers Association before the AIRC. In that matter the Australian Retailers Association conceded that a moderate increase in award rates of pay was appropriate. In opposing the applications generally the NRA asked the Commission to have regard to the following factors:

- the performance of the retail sector was vital to the health of the overall economy;
- the multiplier effect generated by additional turnover in the retail sector;

- the retail industry is a labour intensive and supplier intensive industry;
- the retail industry is the largest employing industry in Queensland and nationally; and
- that the increases sought exceed the consumer price index.

QHA

[34] The Queensland Hotels Association, Union of Employers (QHA) submits that an increase of \$12.00 per week is more appropriate than that sought in the applications. The QHA supports the applications in all other respects.

[35] The QHA acknowledges that some 50% of those employed by its members in Queensland will receive the benefit of the \$19.00 increase granted by the AIRC as such employees are covered by the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998* – an award of the AIRC. The QHA submits that this Award, and thus the \$19.00 increase, covers employees in the south east corner of Queensland. The remaining 50% of those persons employed by members of the QHA are employed outside the south east corner of the State. The QHA contends that those employed outside the south east corner of Queensland should only receive a \$12.00 per week increase.

[36] In arguing for different increases to apply to hotel industry workers outside the south east corner of Queensland, the QHA referred the Full Bench to various statistical data which tends to show that:

- hotels in the south east corner are outperforming regional hotels in “room occupancy” rates; and
- hotels in the south east corner are outperforming regional hotels in “takings”.

RCEA

[37] The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers (RCEA) opposes the applications. This is in contrast to the position adopted by The Restaurant and Catering Association of Victoria which was the only similar organisation to make submissions before the AIRC and which conceded that a moderate increase in award rates of pay was appropriate.

[38] The RCEA’s position was that it did not dispute that the Queensland economy was moving in a positive direction but submitted that the granting of the increases sought by the AWU and QCU would “cause the greater business community much concern”. Further the RCEA accepted that the economic data demonstrated that the Queensland labour market was solid. The RCEA also pointed to Queensland Treasury data which indicated that cafes, restaurants and accommodation recorded its fifth consecutive quarter of annual job losses. These losses are said to result from the effect on tourism of uncertain external conditions and the SARS virus. The food industry, according to the RCEA, still has a “hang-over” from the downturn of the 2002-03 period.

HAQ

[39] The Hardware Association of Queensland, Union of Employers (HAQ) opposes the applications arguing that the granting of the applications would lead to a slowing of the rate of employment growth within the retail industry. The HAQ did not dispute that the Queensland economy was moving in a positive direction. The HAQ also stated that “growth in the labour market appears to be indisputable” but point to a number of issues that the Full Bench should consider including:

- job losses in the industry;
- business closures with a resultant increase in unemployment;
- reduction in employment opportunities; and
- rising cost of goods.

[40] There was however no evidence adduced to support the submission that the hardware industry was any different to the labour market generally in Queensland.

QMCHA

[41] The Queensland Mechanical Cane Harvesters Association Union of Employers (QMCHA) opposes the granting of the applications to the classification of Cane Harvester and Cane Haulout, Division 2, Field Sector, *Sugar Industry Award – State*. It is also opposed to any increase in allowances relating to work and conditions with respect to such classifications and to the operative date. We have accepted the QMCHA’s Response to the AWU and QCU applications as being an application for exclusion from any General Ruling we may make. In such circumstances we will deliver a separate decision on the QMCHA’s application for exclusion.

QCGA

[42] The Queensland Cane Growers’ Association, Union of Employers (QCGA) supports an increase of \$10.00 per week in award rates of pay, a 1.8% increase in allowances relating to work and conditions, a \$10.00 increase in the Queensland Minimum Wage and an operative date of 1 January 2005. In support of its application, the QCGA adduced evidence from Ian James Ballantyne, the General Manager of Queensland Cane Growers Organisation Ltd. It is those employed pursuant to Division 2 of the Field Sector *Sugar Industry Award – State* which the QCGA is concerned.

[43] According to Mr Ballantyne increased wages will adversely impact upon the immediate and future economic capacity of employers in the sugar industry field sector. Mr Ballantyne said that cane growers were very poorly placed to be able to absorb any cost increases because of the severe financial crisis facing the industry. It was Mr Ballantyne’s evidence that the exceptional circumstances facing the industry (poor weather and a low sugar price) will continue to adversely impact upon the cane growers’ economic capacity to pay increases.

[44] According to Mr Ballantyne, the Australian Government’s Sugar Industry Reform Plan has provided the industry with \$444 million. As a result, growers have already received \$67 million in Sustainability Grants with further amounts to be paid in January 2005. Other aspects of the package include income support, Restructuring and Re-establishment Grants and provision for Business Planning Assistance. It was Mr Ballantyne’s evidence that the sugar industry has not shared in the booming economic times that Queensland industry generally has experienced and asks that special consideration be given to employers in the industry.

[45] The QCGA submits that s. 320(2), (3) and (5) of the Act require us to consider the sugar industry field sector’s economic position as an integral part of the Queensland economy and to exercise its power with this in mind. The QCGA asks the Commission to consider the past, present and future economic position of the field sector in its consideration of the applications.

- [46] The QCGA also points to the impact of the sugar industry on local communities in the sugar growing areas of Queensland submitting that there will be adverse effects on such communities should the increase be granted. We will comment on this submission later in this decision.

AgForce

- [47] AgForce Queensland Industrial Union of Employers (AgForce) opposes the applications. This is consistent with the position adopted by the National Farmers' Federation before the AIRC. AgForce submits that it represents some 10,000 employers in the beef cattle, wool production, sheep meat production, grain growing, cotton growing and associated industries none of which has consistently operated in an economically viable environment for the past few years largely as a result of the effects of extreme record drought conditions in Queensland.
- [48] AgForce's submission highlights the effects of prolonged drought on the industries it represents. It points to the fact that, at the present time, there are 48 shires drought-declared and a further 8 shires part drought-declared.
- [49] Further, AgForce submits that its members are generally subject to the provisions of two awards of this Commission – the *Shearing Industry Award – State 2003* and the *Station Hands Award – State 2003*. AgForce contends that as a result of the application of the Queensland Minimum Wage to the latter Award, wage rates have increased considerably in recent years. In addition AgForce cites the decision of Hall P in *AgForce Queensland Industrial Union of Employers v The Australian Workers' Union of Employees, Queensland* (2003) 174 QGIG 825 wherein the President found that the value of "keep" (\$74.30 per week) was excluded as part of remuneration (and as part of the Queensland Minimum Wage calculation) as had previously been the case. AgForce submits that since September 2003, wage rates under the *Station Hands Award – State 2003* have risen in varying degrees ranging from 5.9% to 23%. AgForce submit that any further increases would constitute unreasonably high levels of increases in the industry.
- [50] This Bench is bound by the principle of precedent. Hall P made the decision that the value of "keep" did not form part of the Queensland Minimum Wage. The Queensland Minimum Wage is the lowest wage that can be paid to an employee in Queensland. The Queensland Minimum Wage resulted from a hearing before a Full Bench of this Commission and the wage cannot be regarded as excessive. We have formed the view that depriving 25% of workers in Queensland an increase in award rates and/or the Queensland Minimum Wage is not an appropriate response to the plight of those employing persons under the *Station Hands Award – State 2003*.

Sugar Industry

- [51] In the exercise of its functions and powers, this Commission must consider, in terms of s. 320(5) of the Act "the public interest", and to that end must consider "the likely effects of the commission's decision on the community, local community, economy, industry generally and the particular industry concerned". To this end, the Commission must take into account the financial state of the field sector of the Queensland sugar industry. In their submission the QCGA stated that the various Shire Councils located in the sugar industry communities have expressed their concern at the adverse impact that a downturn in the sugar industry is having on those local communities.
- [52] That submission is somewhat inconsistent with the submission of the LGA which represents 125 city, town and shire councils in Queensland. The LGA supported the adoption of the AIRC outcomes albeit on the ground of consistency. If the local authorities have concerns then it would be incumbent on the QCGA and the QMCHA to have those various local authorities give evidence and/or make submissions on the effect on their communities resulting from the circumstances facing the sugar industry.
- [53] The Australian Government has recognised the plight of the sugar industry through the Sugar Industry Reform Plan. While there is little evidence of the detail of this Plan it seems to us that the benefits flow to growers and other employers in the industry. Employees do not appear to have access to any of the monies.

Conclusion

- [54] This Commission is required by s. 273(2)(a) of the Act to perform its functions in a way that furthers the objects of the Act and further, in making any decision, s. 320(5) of the Act requires the Commission to consider the public interest, and to that end the Commission must consider the objects of the Act and the likely effects of its decision on the community, local community, economy, industry generally and the particular industry concerned. The principal object found in s. 3 of the Act is to provide a framework for industrial relations that supports economic prosperity and social justice. Section 3 of the Act provides further the means by which the principal object can be achieved. In so far as these applications are concerned the relevant paragraphs of s. 3 of the Act are:
- providing for rights and responsibilities that ensure economic advancement and social justice for all employees and employers: paragraph (a);
 - providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness: paragraph (b);
 - promoting the effective and efficient operation of enterprises and industries: paragraph (f); and
 - ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community: paragraph (g).
- [55] The Commission is also required by s. 126(d) and (f) of the Act to ensure that awards provide for "secure, relevant and consistent wages and employment conditions" and provide for "fair standards for employees in the context of living standards generally prevailing in the community".
- [56] The decision of the AIRC in the *2004 Safety Net Review* is also a matter that is relevant to consider. The AIRC in its decision concluded that the Australian economy was strong and that the economic outlook raised an expectation that the Australian economy will continue to perform well. The material before this Full Bench would indicate that the Queensland economy is sound and the forecast is for the Queensland economy to remain positive.
- [57] Whilst the impact of the drought has probably been felt more in Queensland than in the Australian economy generally, and the Queensland sugar industry continues to face difficulties, we are not persuaded that those aspects of the Queensland economy warrant any departure from the outcome in the AIRC decision. The discrepancy in our view is not large and certainly not consistent throughout industry: see comments of the Full Bench in *Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others* (2000) 164 QGIG 372.
- [58] Around one quarter of Queensland employees rely on the Queensland Industrial Relations Commission award system to provide wage increases. There continues to be a wage disparity between those employees who are able to bargain either individually or collectively for wage increases and those who rely upon the award system. An inability to negotiate wage increase with their respective employers should not, in our view, deprive such workers of a wage increase such as that sought in these applications.

- [59] This Full Bench has considered the evidence of Mr Ballantyne and all of the submissions before it. We are of the view that the proper course is to flow the increases granted in the *2004 Safety Net Review* to awards of the Queensland Industrial Relations Commission in so far as the increases relate to arbitrated wage adjustments and the adjustment of allowances that relate to work and service increments. There will be consequent amendments to the *2003 Statement of Principles*.
- [60] Section 287(1)(c) and (2) of the Act require the Commission to make a general ruling about a Queensland Minimum Wage for all employees at least once each calendar year. The last general ruling was made in August 2003 with an operative date of 1 September 2003. As we have decided to grant the \$19.00 per week increase in award wages it is, in our view, appropriate to also grant the applications to increase the Queensland Minimum Wage to \$467.40 per week for full-time employees and a proportionate amount for junior, part-time and casual employees regulated by industrial instruments (excluding industrial agreements).
- [61] The operative date for all increases arising from this decision will be 1 September 2004.

Dated 3 August 2003.

D.M. LINNANE, Vice President.

D.A. SWAN, Deputy President.

B.J. BLADES, Commissioner.

Appearances:

Ms T. Lane for The Australian Workers' Union of Employees, Queensland.
 Mr M. Brady for the Queensland Council of Unions.
 Mr T. Shipstone for the Queensland Government.
 Mr M. Belfield for the Australian Industry Group Industrial Organisation of Employers (Queensland).
 Mr R. Beer for the Local Government Association of Queensland (Inc).
 Mr S. Nance for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.
 Mr J. Price for the Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers).
 Mr G. Hamilton for The Baking Industry Association of Queensland – Union of Employers.

Ms K. O'Brien for The Registered and Licensed Clubs Association of Queensland, Union of Employers.
 Mr C. Broadbent for the National Retail Association Limited, Union of Employers.
 Mr D. Matley for the Queensland Hotels Association, Union of Employers.
 Mr E. De Wet for The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers.
 Ms J. Oliver for the Hardware Association of Queensland, Union of Employers.
 Mr J. Powell for the Queensland Mechanical Cane Harvesters Association, Union of Employers.
 Mr G. Trost for the Queensland Cane Growers' Association Union of Employers.
 Mr W. Turner for AgForce Queensland Industrial Union of Employers.

Hearing Details:
 2004 15 June
 21 July

Released: 5 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287(5)– application for exclusion from operation of a general ruling

**The Australian Workers' Union of Employees, Queensland AND
 Queensland Mechanical Cane Harvesters Association, Union of Employers
 (No. B724 of 2004)**

AND

**Queensland Council of Unions AND Queensland Mechanical Cane Harvesters Association,
 Union of Employers (No. B744 of 2004)**

VICE PRESIDENT LINNANE
 DEPUTY PRESIDENT SWAN
 COMMISSIONER BLADES

3 August 2004

DECISION

- [1] On 3 August 2004 a Full Bench of this Commission granted applications by The Australian Workers' Union of Employees, Queensland (AWU) and the Queensland Council of Unions (QCU) for a declaration of general ruling in respect of the *2004 State Wage Case*. In so doing the Full Bench awarded:
- an increase of \$19.00 per week in award rates of pay;
 - an increase in allowances which relate to work or conditions which have not changed and service increments by an amount of 3.5% being the \$19.00 per week increase in award rates of pay calculated as a percentage of the C10 rate in the *Engineering Award – State 2002*;
 - an increase in the Queensland Minimum Wage for workers regulated by industrial instruments (excluding industrial agreements), to \$467.40 per week; and
 - an operative date of 1 September 2004.
- [2] The Queensland Mechanical Cane Harvesters Association, Union of Employers (QMCHA) seeks an exclusion from that declaration of general ruling under s. 287(5) of the *Industrial Relations Act 1999* (Act). Section 287(5) of the Act provides as follows:
- “(5) A ruling may exclude from the operation of any of its provisions –
- (a) a class of employers or employees; or
 - (b) employers or employees in a particular locality; or
 - (c) an industrial instrument or part of an instrument.”.

- [3] The QMCHA seeks an exclusion from the general ruling in respect of the classifications of Cane Harvester and Cane Haulout in Division 2, Field Sector of the *Sugar Industry Award – State*. The application is made on the basis of the “serious economic adversity and reduction in international competitiveness being experienced by employers in the field sector of the sugar industry”. The application for exclusion was opposed by the AWU and QCU.
- [4] In the exercise of its functions and powers, the Commission must consider the “public interest” and to that end must consider “the likely effects of the commission’s decision on the community, local community, economy, industry generally and the particular industry concerned”. To this end, the Commission must take into account the financial state of the field sector of the sugar industry.
- [5] The Australian Government has recognised the plight of the sugar industry by introducing the Sugar Industry Reform Plan which apparently comprises a program valued at \$444 million. That program appears to have been directed at growers who have received Sustainability Grants. There has also been income support extended to other sugar industry participants. The only evidence before the Full Bench on the plight of the sugar industry was that adduced in the *State Wage Case 2004* by the Queensland Cane Growers’ Association, Union of Employees through the evidence of Ian James Ballantyne, the General Manager of Queensland Cane Growers Organisation Ltd.
- [6] No evidence was adduced by QMCHA in respect of its application for exclusion from the declaration of general ruling.
- [7] A principal submission of the QMCHA in seeking an exclusion was the difference in award rates of pay between employees in the field sector of the New South Wales sugar industry and like employees in the Queensland sugar industry. The submission is that because the Award applying to Queensland field sector workers provides for higher wage rates than the New South Wales counterpart, the \$19.00 wage increase should be denied to such Queensland workers.
- [8] This Full Bench is not in a position to compare wage rates contained in awards in the manner sought by the QMCHA. A number of factors go to the determination of award rates. If such an exercise were appropriate, it would require the presentation of significant and extensive evidence. The position is that the award rate applying to the classifications of Cane Harvester and Cane Haulout in Division 2, Field Sector of the *Sugar Industry Award – State* has been set by this Commission. To deny such employees the increase given to other workers whose employment is covered by awards of this Commission on the basis of the QMCHA submission, would clearly interfere with existing relativities. Whilst the Act in s. 287(5) gives the Commission the power to grant an exclusion from the operation of any general ruling, proof of sufficient reason is required. A simple comparison between awards of this Commission and those of the New South Wales Industrial Commission is simply not sufficient.
- [9] Additionally the QMCHA submits that a barometer of the health and economic state of the sugar cane harvesting sector is the slow down in replacement of machinery and the flow on effect to suppliers, dealers, manufacturers and the regional communities. Whilst the QMCHA gave some examples of this occurring the submission was not supported by the Local Government Association of Queensland (LGA). In the hearing of the applications by the AWU and the QCU for a general ruling the LGA supported the adoption by this Commission of the substantive terms of the AIRC decision. It is noted that the LGA submission in that regard was based on the need for consistency of outcomes in the AIRC and the various State industrial tribunals. The LGA does however represent 125 city, town and shire councils in Queensland. If the local communities were experiencing a severe negative impact from the State of the Queensland sugar industry it would be expected that the individual local councils and/or their representative, the LGA, would provide evidence and make submissions before this Commission.
- [10] The point was made in the *State Wage Case 2003* decision that “[o]nce again the QMCHA called no evidence in support of its s. 287(5) application. The organisation relied upon submissions only.”. No evidence was adduced by the QMCHA on this occasion. If any application for exclusion from a declaration of general ruling is to have any chance of success, evidence must be produced in support of such an application.
- [11] In the circumstances we are not prepared to deny the benefits of any general ruling to employees in the classifications of Cane Harvester and Cane Haulout, Division 2, Field Sector in the *Sugar Industry Award – State*. In our view, to deprive such employees of the *State Wage Case 2004* increases would be to deny such employees the benefit of “fair standards in relation to living standards prevailing in the community”. This is particularly so when there was no evidence before the Full Bench on which it could rely.
- [12] In the circumstances we dismiss the QMCHA application for exclusion.

Order accordingly.

D.M. LINNANE, Vice President.

D.A. SWAN, Deputy President.

B.J. BLADES, Commissioner.

Hearing Details:
2004 21 July

Appearances:

Ms T. Lane for The Australian Workers’ Union of Employees, Queensland.

Mr M. Brady for the Queensland Council of Unions.

Mr J. Powell for the Queensland Mechanical Cane Harvesters Association,
Union of Employers.

Released: 5 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 287– application for declaration of a general ruling
s. 288 – application for declaration of policy*

**The Australian Workers’ Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B724 of 2004)**

AND

**Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B744 of 2004)**

VICE PRESIDENT LINNANE
DEPUTY PRESIDENT SWAN
COMMISSIONER BLADES

3 August 2004

DECLARATION OF GENERAL RULING – STATE WAGE CASE 2004

This Commission declares by way of General Ruling that all awards be amended to include the following provisions:

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1. Arbitrated Wage Adjustment

- (a) Except as otherwise provided herein the wages or salaries prescribed by all awards for full-time adult employees shall be increased from 1 September 2004 by an additional sum of \$19 per week in all award rates of pay.
- (b) The rates for junior employees shall be increased by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant minimum classification rate for a full-time adult employee.
- (c) All part-time employees shall receive, on a *pro rata* basis, the additional sum appropriate to the minimum classification rate they are employed under.
- (d) The rates for adult pieceworkers shall be adjusted by the Registrar in accordance with the practice previously followed in relation to General Rulings declared by this Commission.
- (e) In the case of rates of wages or salaries for adult employees expressed as a wage or salary for a period other than a week, the increase consequent upon this Declaration shall be calculated as follows:

For: Annual Salaries		weekly adjustment multiplied by 52
Fortnightly Wage/Salary		weekly adjustment multiplied by 2
Daily Wage		weekly adjustment divided by 5
Hourly Wage	(40 hour week)	weekly adjustment divided by 40
	(38 hour week)	weekly adjustment divided by 38
Casual Rates*	(hourly)	hourly wage (as calculated above) plus 25%
	(daily)	daily wage (as calculated above) plus 25%
(*this would apply when the casual rate is stated as a money amount)		

- (f) Each award amended to include the rates of pay arising from this Declaration of General Ruling shall include a notation that:

"The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2004 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. [Disputed cases are to be referred to the Vice 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."

- (g) Existing allowances in all awards that relate to work or to conditions which have not changed and service increments are to be increased as from 1 September 2004 by 3.5%. This is the percentage increase that the \$19 per week arbitrated wage adjustment bears to the C10 tradesperson's rate in the Engineering Award – State 2002.
- (h) Increases to wages or salaries and allowances shall be expressed as follows:
- on annual salaries to the nearest \$1 (with 50c and above being taken upwards);
 - on fortnightly and weekly wage rates to the nearest 10 cents (with 5c and above being taken upwards);
 - on daily wage rates (including casual) to the nearest 1 cent (with 0.5c and above being taken upwards); and
 - on hourly wage rates (including casual) to the nearest 0.05 of a cent (with 0.025c and above being taken upwards).
- (i) In giving effect to this General Ruling, the registrar shall have recourse to a Member of the Full Bench, as may be necessary, on the Registrar's own initiative or an application by a party to an award.
- (j) Awards which prescribe or require alternative methods of adjustment shall be adjusted as follows:

Where a Member of the Commission has approved a method of calculation of wage rates as agreed to by the parties to an award other than as expressed herein the registrar may amend the award concerned in the agreed manner which will be regarded as satisfying the requirements of this General Ruling.

This method shall also be applied to adjust the rates of wages or salaries for junior employees (other than juniors who rates are expressed as a percentage or fraction of the rate prescribed for an adult employee or for an employee who is a senior).

2. Queensland Minimum Wage

- (a) The minimum rate per week for all full-time employees in Queensland is \$467.40 per week.
- (b) An employee is an employee as defined in s. 5 of the *Industrial Relations Act 1999* who is not –
- a disabled person or a person working in supported employment services;
 - a person whose services are paid wholly by commission or percentage rewards;
 - a piece rate worker;
 - a volunteer; or
 - an apprentice or trainee under the *Vocational Education, Training and Employment Act 2000*.
- (c) Award free employees who are engaged on a permanent part-time or casual basis shall be entitled to a minimum rate of the Queensland Minimum Wage divided by 40 for each hour or part thereof (including hours worked in excess of 40 per week).
- (d) Notwithstanding clause 2(b)(iii), piece rate workers entitled to a rate derived from a weekly rate for full-time employees shall be entitled to derive that rate from the minimum rate per week for full-time employees as stated in clause 2(a), if that minimum rate exceeds the otherwise nominated full-time weekly rate.

- (e) Award free employees under the age of 21 shall be entitled to a minimum rate of pay calculated as a percentage of the Queensland Minimum Wage, or the equivalent hourly rate determined in accordance with clause 2(c). the junior percentage rates are as follows:

Age	Percentage	Wages Per Week
17 years and under or 1st year of experience	55%	\$257.07
(whichever yields the greater rate)		
18 years or 2nd year of experience	65%	\$303.81
(whichever yields the greater rate)		
19 years or 3rd year of experience.....	75%	\$350.55
3rd year of experience.....	85%	\$397.29
20 years and over	100%	\$467.40

- (f) This General Ruling shall have no application to employees whose engagement is governed by an industrial instrument other than an award on 20 December 2002, during the currency of that industrial instrument.

3. Date of Operation

This Declaration shall apply from 1 September 2004.

Dated 3 August 2004.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Operative Date: 1 September 2004
Order – Declaration of General Ruling
Released: 5 August 2004

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287– application for declaration of a general ruling
s. 288 – application for declaration of policy

**The Australian Workers’ Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B724 of 2004)**

AND

**Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B744 of 2004)**

VICE PRESIDENT LINNANE
DEPUTY PRESIDENT SWAN
COMMISSIONER BLADES

3 August 2004

DECLARATION OF POLICY – STATE WAGE CASE 2004

STATEMENT OF PRINCIPLES

1. Role of Principles

The purpose of the principles is to provide guidance to the commission constituted by a Member sitting alone. Howsoever constituted the Commission will have regard to s. 3 of the *Industrial Relations Act 1999* and must have regard to s. 126.

2. When an award may be amended or another award made without the claim requiring consideration by a Full Bench.

In the following circumstances an award may, on application, be amended or another award made without the application requiring consideration by a Full Bench:

- (a) to adjust wages to provide for a total minimum rate in accordance with Principle 3(e);
- (b) to include previous State Wage Case increases in accordance with Principle 4;
- (c) to incorporate Statements of Policy and like decisions in accordance with Principle 5;
- (d) to adjust allowances and service increments in accordance with Principle 6;
- (e) to adjust wages pursuant to work value changes in accordance with Principle 7;
- (f) to reduce standard hours to 38 per week in accordance with Principle 8;
- (g) to adjust wages and employment conditions in accordance with Principle 9; and
- (h) to make orders under Chapter 3 Part 4 of the *Industrial relations Act 1999*.

3. State Wage Case Adjustment

In accordance with the State Wage Case 2004 awards are to be amended by way of a Declaration of General Ruling in the following form:

- a \$19 per week increase in all award rates of pay,

subject to the following:

- (a) The operative date will be 1 September 2004;
- (b) There will be absorption of the State Wage Case adjustment to the extent of:
 - (i) any above award payments; and
 - (ii) award wage increases since 1 February 1992 other than safety net, State Wage Case, work value, minimum rates adjustments;
- (c) Above award 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.

- (d) The following clause is to be inserted into all awards that have been amended to give effect to the Declaration of General Ruling:

“The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2004 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. [Disputed cases are to be referred to the Vice 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.”.

The above clause will replace the offsetting clause inserted into awards pursuant to the Statement of Principles determined in the State Wage Case 2003 (173 QGIG 1258).

- (e) Where the minimum rates adjustment process in an award has been completed, the Commission may consider an application for the base rate, supplementary payment and State Wage Case adjustments to be combined so that the Award specifies only the total minimum rate for each classification.
- (f) *By consent* of all parties in an award, where the minimum rates adjustment has been completed, award rates may be expressed as hourly rates as well as weekly rates. In the absence of consent, a claim that award rates be so expressed may be determined by arbitration.

4. Previous State Wage Case Increases

Increases available under previous State Wage Case decisions such as structural efficiency adjustments, minimum rates adjustments and safety net adjustments will, on application, continue to be accessible. Such applications will be determined in accordance with the relevant Principles contained in those decisions, notwithstanding that all earlier Statements of Principle are otherwise set aside.

5. Statements of Policy and Like Decisions

Statements of Policy and like decisions established and/or revised by a Full Bench of the Commission may be incorporated into an award in accordance with the relevant provisions of the Act. Where disagreement exists as to whether a claim involves a Statement of Policy or a like decision, the Commission may refer the matter to the Vice President for consideration by a Full Bench.

6. Adjustment of Allowances and Service Increments

- (a) Existing allowances that constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect relevant changes in the level of such expenses.
- (b) Adjustment of existing allowances which relate to work or conditions which have not changed, including shift allowances expressed as monetary amounts and service increments, may be adjusted by the percentage that each State Wage Case adjustment bears to the C10 total rate at the time that each State Wage Case adjustment is made available.
- (c) Existing allowances for which an increase is claimed because of the changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 7 – Work Value Changes Principle.
- (d) New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expense.
- (e) Where changes in the work have occurred or new work and conditions have arisen, the question of a new allowance, if any, will be determined in accordance with the relevant principles of the statement of Principles. The relevant Principles in this context may be Principle 7 – Work Value Changes or Principle 10 – first Award and Extension to an Existing Award.
- (f) New service increments may only be awarded to compensate for changes in the work and/or conditions and will be determined in accordance with the relevant parts of Principle 7 – Work Value Changes Principle.

7. Work Value Changes

- (a) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.

In addition to meeting this test a party making a work value application will need to justify any change to wage relativities that might result not only within the relevant internal award structure but also against external classifications to which that structure is related. There must be no likelihood of wage leapfrogging arising out of changes in relative position.

These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this principle.

- (b) Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification, or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.
- (c) The time from which work value changes in an award should be measured is the date of operation of the second structural efficiency adjustment allowable under the *October 1989 State Wage Case Decision* [132 QGIG 1199].
- (d) Care should be exercised to ensure the changes which were or should have been taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this Principle.
- (e) Where the tests specified in (a) are met, an assessment will have to be made as to how that alteration should be measured in monetary terms. Such an assessment will normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work.
- (f) The expression *“the conditions under which the work is performed”* relates to the environment in which the work is done.

- (g) The Commission will guard against contrived classifications and over-classification of jobs.
- (h) Any changes in the nature of work, skill and responsibility required or the conditions, under which the work is performed, taken into account in assessing an increase under any other Principle of this Statement of Principles, will not be taken into account under this Principle.

8. Standard Hours

In approving any application to reduce the standard hours to 38 hours per week, the Commission will satisfy itself that the cost impact is minimised.

9. Award Amendment to Give Effect to a Certified Agreement

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

10. First Award and Extension to an Existing Award

- (a) Any first award or an extension to an existing award must be consistent with the commission’s obligations under Chapter 5 of the Act.
In determining the content of a first award the Commission will have particular regard to:
 - (i) the existing wage rates and conditions of employment applicable to the employees to be covered by the proposed Award;
 - (ii) relevant Statements of Policy and like decisions;
 - (iii) relevant wage rates in other awards; and
 - (iv) the maintenance or establishment of appropriate relativities within and between awards and the need for skill based career paths.
- (b) In the extension of an existing award to new work or to award free work the rates applicable to such work will be assessed by reference to the value of the work already covered by the Award.
- (c) The proposed Award or extension to award is not a device to circumvent the requirements which the parties would have to comply with in the event they had sought to have an existing certified agreement amended, or a new agreement certified or an award amended to give effect to a certified agreement.
- (d) The matter may be referred to a Full Bench with the approval of the Vice President.

11. Economic Incapacity

Any person, natural or artificial, bound by an award may apply to, temporarily or otherwise, reduce, postpone and/or phase-in the application of any increase in labour costs determined under this Statement of Policy on the ground of very serious or extreme economic adversity. The merits of such application will be determined in the light of the particular circumstances of each case and any material relating thereto shall be rigorously tested.

Any decision to temporarily reduce or postpone an increase will be subject to further review, the date of which will be determined by the Commission at the time it decides any application under this Principle.

12. Reference to Full Bench

An application to amend an award outside these principles may be referred to a Full Bench with the approval of the Vice President. Members are to monitor proceedings to ensure that referral occurs where it is appropriate.

13. Duration

This Statement of Principles will operate until reviewed.

Dated 3 August 2004.

D.M. LINNANE, Vice President.

D.A. SWAN, Deputy President.

B.J. BLADES, Commissioner.

Released: 5 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Geoff Jennings AND Progressive Contractors Pty Ltd (No. B471 of 2004)

DEPUTY PRESIDENT BLOOMFIELD

4 August 2004

Application for reinstatement – Applicant found to have resigned employment – No jurisdiction – Application dismissed – Application for costs – Costs awarded.

DECISION

On 26 July 2004 the Commission dismissed an application by Mr Geoff Jennings (the applicant) for reinstatement with Progressive Contractors Pty Ltd (the respondent) on the basis the applicant freely resigned his employment and had not been dismissed. The Commission also decided it would award costs in an amount to be determined after receiving further submissions from the respondent.

I now provide reasons for that decision.

The hearing of the matter was originally scheduled for 14 July 2004. However, because of the absence overseas of the respondent's primary witness, it was adjourned to 26 July 2004 by agreement between solicitors for the applicant, solicitors for the respondent and the Commission.

Despite complying with the initial aspects of the Further Directions Order regarding discovery, the applicant failed to provide any witness statements prior to the hearing. Although filed late, the respondent filed its witness statements on 21 July 2004. On the morning of 26 July 2004, the solicitors for the applicant wrote to the Commission advising they no longer held instructions to act on behalf of the applicant and, on that basis, sought leave to withdraw as his legal representative. This letter, in effect, confirmed verbal advice given to my Associate during the course of the previous week that the solicitors had not received clear instructions from their client in several weeks despite repeated attempts to obtain such instructions.

On the basis that the matter had been adjourned to 26 July 2004 with the agreement of the applicant's solicitors, who it must be presumed acted on instructions, the Commission decided to hear and determine the matter in the absence of the applicant. In doing so, the Commission noted that the applicant had not attended at the Commission on 14 July 2004, when the matter was originally scheduled.

The respondent filed 6 affidavits, which were each admitted into evidence, as follows:

- Mr Paul Pask, a director;
- Mr Brian Drewett, a formwork carpenter;
- Mr Norman Pask, a consultant to the respondent;
- Mr John Blaine, a qualified carpenter;
- Mr Timothy Harlow, a qualified carpenter/formworker; and
- Mr Christian McKinnon, a builder's labourer.

After considering the unchallenged evidence of each of the 6 witnesses I conclude the applicant resigned his employment in a conversation with Mr Paul Pask, witnessed by Mr Brian Drewett, during the morning of 3 March 2004. I further conclude the applicant confirmed his resignation to Mr Paul Pask on the morning of 4 March 2004 after being encouraged to consider a move to the Gold Coast during the course of the previous afternoon by Mr Paul Pask and Mr Norman Pask. I further conclude the applicant confirmed he had resigned, and confirmed he had rejected the above offer of work at the Gold Coast, in separate discussions with Mr John Blaine, Mr Timothy Harlow and Mr Christain McKinnon in the days which followed his resignation.

After considering the submissions of Mr Merrell, of Counsel, who appeared for the respondent, I also decided to exercise my discretion pursuant to s. 335 of the *Industrial Relations Act 1999* (the Act) and award costs in respect of the matter.

In *MacKenzie v Wangetti Education Centre* (2001) 166 QGIG 452 Asbury C said:

"Under the provisions of previous legislation, costs have been awarded on several occasions on the ground that an application was made frivolously, vexatiously or without reasonable cause. It can be seen that costs have been awarded on this basis where the position taken by a party is untenable in the light of all the circumstances (see L v Thuringowa City Council (1993) 144 QGIG 224 at 225); where an argument is dishonest (see Vernon Reddick v Ocean Spirit Cruises Pty Ltd (1999) 161 QGIG 163 at 164); or in cases where the applicant, or those who advised the applicant, knew that proceedings could not succeed, yet still pursued an application (see Townsville City Council v Peter Brennan (1998) 157 QGIG 92 at 93)."

In the instant case, one is entitled to draw the inference – firstly, from the evidence and, secondly, by virtue of the applicant's non-attendance and his failure to comply with all but the initial Further Directions Order – that the application was pursued frivolously or vexatiously by the applicant who put the respondent to the time and expense of preparing to defend the claim of unfair dismissal. In any event, the application was one which never stood a chance of success. It was doomed from the moment it was lodged because the applicant resigned his employment. It was thus pursued without reasonable cause.

In the circumstances, after considering the respondent's costs on an indemnity basis (\$15,876.48) and under Scale G of the Magistrates Court Scale (\$7,517.00), I have decided to exercise my discretion under s. 335 of the Act and to award costs in the amount of \$9,000.00.

Summary of Commission's orders

It is the Commission's order that the application be dismissed for want of jurisdiction on the basis that the applicant was never dismissed from his employment. For the purposes of certainty, the Commission dismisses the application in the public interest pursuant to s. 331 of the Act.

Pursuant to the discretion vested by s. 335 of the Act the Commission also orders the applicant, Mr Geoff Jennings, to pay the respondent, Progressive Contractors Pty Ltd, the sum of \$9,000.00 as its costs in the proceedings within 22 days of the date of release of this decision.

The Commission determines and orders accordingly.

A.L. BLOOMFIELD, Deputy President.

Appearances:

No appearance by the Applicant.

Mr J. Merrell, Counsel instructed by Mr C. Smith of Grays Professional Services Group, for the Respondent.

Hearing Details:
2004 26 July

Released: 4 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

National Retail Association Limited, Union of Employers AND Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (No. B834 of 2004)

FAST FOOD INDUSTRY AWARD – SOUTH-EASTERN DIVISION 2003

COMMISSIONER BECHLY

3 August 2004

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 16 July 2004, Commissioner Bechly said:

"It is my intention to grant the application before me today. The issues were examined very closely in 2002 and despite the small decline in outlets I am satisfied, on the material presented, that there are a sufficient number of outlets to meet the requirements established in earlier decisions of the Commission to enable Brodies to be included in the Fast Food Industry Award – South-Eastern Division 2003."

Dated 3 August 2004.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Hearing Details:
2004 23 June
16 July

Appearances:

Mr G. Black of the National Retail Association Limited, Union of Employers, on behalf of the applicant.
Mr L. Gillespie of the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees, the respondent.

Released: 4 August 2004

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s.125 – application for a new award

**The Australian Workers' Union of Employees, Queensland AND Torres Strait
Regional Authority on behalf of various Councils and Another (No. B808 of 2004)**

**TORRES STRAIT ISLANDER COMMUNITIES – COMMUNITY DEVELOPMENT
EMPLOYMENT PROJECTS (TORRES STRAIT) AWARD – STATE 2004**

COMMISSIONER BLADES

4 August 2004

Industrial Relations Act 1999, s. 125 – New Award – Torres Strait Island Communities – Community Development Employment Projects – Explanation of CDEP Scheme – Participation voluntary – Whether an obligation to perform work – Whether a contract of employment – Participants required to perform work – Source of funding – Payment of "extras" from "oncosts" fund – Compliance with provisions of Chapter 5 and Statement of Principles relating to First Award – Application granted.

DECISION

This is an application brought by The Australian Workers' Union of Employees, Queensland (AWU) for the making of a new award under s. 125 of the *Industrial Relations Act 1999* (the Act). The purpose of the proposed Award is to establish minimum standards and conditions for participants of the Community Development Employment Projects Scheme (CDEP) who live in the numerous localised communities throughout the Torres Strait. It is sought that the Award has effect in the following Communities:

Bamaga Community; Seisia Community; Badu Island; Boigu Island; Coconut Island; Rennel Island; Darnley Island; Stephen Island; Dauan Island; Hammond Island; Moa Island (Kubin Community and St. Paul's Community); Mabuig Island; Mer (Murray) Island; Dauar Island; Saibai Island; Warraber Island; Yam Island; Yorke Island; Horn Island; Thursday Island; Warrior Island and Nagir Island.

It is also provided that the Award will operate in any community of the Torres Strait or Cape York Peninsula which may in the future operate a CDEP scheme funded by the Torres Strait Regional Authority (TSRA) who has responded to this application on behalf of the named Communities.

The application is made *by consent*. The Local Government Association of Queensland (Incorporated) appeared as an interested party and has also indicated consent.

The basis of the application, as submitted by the AWU, is that the Spicer Report, released in 1997, recommended that the Aboriginal and Torres Strait Islander Commission (ATSIC) consider a policy of establishing minimum industrial and employee relations standards within CDEP organisations and that the proposed Award is consistent with that Report and was developed as a direct response to that Report.

This Award will be unique and while others have attempted to formulate an award, nothing has elsewhere yet been finalised.

The AWU has submitted that the CDEP scheme is a Federally funded program administered through ATSIC to enable Aboriginal and Torres Strait Islander communities and organisations to take control of their community, enhance economic and social development and to provide employment for people in their communities.

The Spicer Report (the Report), part of which was exhibited, was an Independent Review of the CDEP Scheme presented to the Chairperson of ATSIC in December 1997. Recommendation 12 of the Review proceeds:

"In the light of the research undertaken by the Monash University's National Key Centre for Industrial Relations, the Review recommends that:

- . there is a need to develop improved information collection and analysis in respect to industrial and employee relations practices;
- . ATSIC should consider a policy of establishing minimum industrial and employee relations standards within CDEPs; and
- . collective certified agreements should be encouraged as they appear to best meet the needs of CDEP participants and organisations."

The Report provides an insight into what CDEP is all about but essentially, CDEP operates as a unique partnership with Government, designed to achieve real outcomes for indigenous communities and individuals. CDEP has made a significant contribution to addressing the unemployment situation of indigenous peoples and has in recent years, been responsible for two-thirds of the jobs created for indigenous Australians. Individuals are either a CDEP scheme participant or a social security beneficiary.

The National Key Centre in Industrial Relations, Monash University was commissioned to examine the implications of the *Workplace Relations Act 1996* on the CDEP scheme and a summary is contained in the Report. It was recommended therein that standards based formal rules and regulations applying to CDEP organisations be incorporated into consent awards and certified agreements.

The CDEP Handbook 2003-2004 (Handbook) published by ATSIC, exhibit 3, explains what is CDEP:

“CDEP stands for Community Development Employment Projects. CDEP is available to Aboriginal and Torres Strait Islander communities or distinct groups of Aboriginal and Torres Strait Islander people within a community. The scheme enables unemployed Aboriginal and Torres Strait Islander persons to undertake work on activities chosen by the community or organisation.

The scheme facilitates community development and is community and participant led. Communities decide on their own projects and work activities ranging from housing and road maintenance to artefact production and horticultural enterprises. The CDEP scheme also encourages cultural maintenance, as cultural activities are legitimate CDEP work activities.

The scheme facilitates skills acquisition, including accredited training and linkages for apprenticeships and traineeships.

Enhanced economic and social outcomes for CDEP communities are facilitated through linkages with those provided from other programs.

Participation in the scheme is voluntary.”.

There is also a **booklet** published by ATSIC in July 2002, exhibited as No. 4 which explains that:

“CDEP offers indigenous Australians the opportunity to work in a wide range of community development projects and enterprises. To partake in the scheme, unemployed members of a community or group choose to give up their current entitlements with Centrelink. ATSIC offers a grant to the CDEP community organisation to enable it to undertake community-managed activities and pay wages to participants.

Community organisations responsible for the management of projects also receive funding to cover the costs of administration and capital items required to conduct work projects.”.

The booklet explains that the primary objective of the CDEP scheme is to provide work for unemployed Aboriginal and Torres Strait Islander persons in community managed activities which assist the individual in acquiring skills which benefit the community, develop business enterprises and/or lead to unsubsidised employment. As at July 2002, more than 34,000 Aboriginal and Torres Strait Islander peoples in over 270 communities participated in the scheme by electing to forego their Centrelink entitlement and work for wages (usually equivalent to what they would receive from Centrelink benefits). Participants in the scheme must be offered work and the opportunity to earn a wage. Community organisations responsible for the management of projects also receive funds to cover the costs of administration and capital items required to conduct work projects. Some of the work activities include – cattle operations; feral animal control; transport; reforestation; farming; tourist operation; drug and alcohol rehabilitation; sport activities; child care; security; broadcasting; video and music production, just to name a few. It is obvious that there would be a number of awards of the Commission covering these activities.

The role of Centrelink is also explained. Centrelink is responsible for assessing the eligibility for participants to commence on the scheme and need to know when a person commences on or leaves the scheme. This information is required in order to commence or cease individual Department of Families and Community Services allowances.

The Handbook provides that the responsibilities of CDEP participants is to:

- turn up for work regularly, unless on approved leave,
- comply with the work rules of the Grantee organisation,
- tell Centrelink that they have joined CDEP,
- tell Centrelink that they have left the scheme,
- tell Centrelink of any changes in their circumstances, and
- honour agreements entered into with the grantee organisation, and if applicable, host employers.

CDEP participants are not limited to earning income only from CDEP wages and are entitled to earn limited income from other sources, including CDEP oncost. It is provided that “oncosts” also include other mandatory items such as workers’ compensation, payroll tax and top-up payments for participants who work longer hours or undertake additional responsibilities.

It is against that background, briefly stated though it is, that the AWU seeks an award to provide for minimum conditions of employment.

There were a number of concerns which came to mind when considering the proposed Award provisions. For example, clause 4.1.1 provides:

“For the purposes of this Award, participants are classified into 2 categories:

- *Category A participants work a specified number of hours per week as determined by the relevant community council or organisation.*
- *Category B participants work extra hours in addition to those worked by category A participants. These hours may or may not be regular but will be paid the CDEP participant wage directly as if it were a subsidy. The number of these extra hours is determined by the relevant community council or organisation.”.*

The provision concerning Category B employees is difficult to understand without reference to the submissions and the exhibited material. These employees work on projects not subject to the CDEP scheme and may work a full working week. The employer pays the full rate to the employee but the CDEP part is paid as a subsidy. These pay rates are determined in clause 5.5 where Category A participants receive at least 1/38th of the Queensland Minimum Wage and Category B participants are entitled to payment for all hours worked at the rate prescribed by the relevant State or Federal Award or Certified Agreement.

Clause 1.5.2 of the proposed Award defines “CDEP” and concludes “Participation in the CDEP scheme is voluntary and participants are able to leave at any time” with the words “,without notice” being added as an amendment at the preliminary hearing. Clause 1.5.8 defines “Work” as:

“... means whatever activities are determined by the employer to be legitimate for attracting payment of a CDEP wage, may be less structured than in other workplaces in view of cultural differences and includes participation in ceremonial business.”.

Clause 6.1 “Hours of work” provided as follows:

“6.1.1 Communities operating CDEP schemes will decide whether or not participants are actually required to perform work in order to receive pay.

6.1.2 Where participants are required to perform work, communities shall determine a specified minimum number of regular hours per week.”.

These clauses caused concern about whether there was an employer/employee relationship at all, that is, whether there was any intention to form a legally enforceable contract or whether the arrangement was purely voluntary. It is the first essential element of any contract that there be a mutual intention to create a legally enforceable bargain. There must also be valuable consideration which must come from both parties to a contract. There must be an obligation to perform work – *Dietrich v Dare* (1980) 54 ALJR 388 at 390. The CDEP Handbook reveals that although participation in the scheme is voluntary, Centrelink may examine the reason for leaving and in fact, that participant may not be eligible for income support payments. The Handbook

provides that a person can leave the CDEP scheme at any time for any reason by notifying their CDEP Coordinator and Centrelink. The Handbook envisages that a grantee, i.e. the community organisation, is an employer. Moreover, Exhibit No. 1, "Program Specific Terms and Conditions for CDEP Grants" provides in clause 5.5 that the grantee must offer work to all CDEP participants, who must be available to take up an offer of CDEP work and be able to work the hours required. An example of CDEP Work Rules, that of the Boigu Island Council, was exhibited as No. 2 and clause 3 provides for a "No Work No Pay Rule". It is provided that an employee who fails to report for work will not be paid for the period of the absence, illness and injury or other approved leave excepted. In my view, clause 6.1, as it originally existed set up a conflict with the law in relation to valuable consideration and the terms and conditions of the scheme I have referred to. A clause which reads:

"6.1.1 Communities operating CDEP schemes will decide the hours of work that participants are actually required to perform work in order to receive pay.

6.1.2 Communities shall determine a specified minimum number of regular hours per week for work participants."

would comply with the common law of contract and the rules of the Scheme. Had there generally been no requirement to work, it would have been an agreement nudum pactum, and I would have seriously doubted the legality of the arrangement so far as a contract of employment was concerned. In the absence of a legally binding contract, I would have doubted the jurisdiction of the Commission to make an award. Macken The Law of Employment 4th ed at p 118 says "Awards presuppose the existence of an employer-employee relationship and also the common law". See also R v Foster; Ex parte Commonwealth Life (Amalgamated) Assurances Ltd (1952) 85 CLR 138 at 152-153. In response to my concerns, the parties have agreed to substitute the suggested clauses.

Another matter causing concern was the source of the funds for payment of such items as:

- Long service leave "cash outs";
• Payment in lieu of notice; and
• Superannuation.

As was explained in the submissions and becomes evident from the documentary exhibits, these items are covered by the "oncosts" fund which could comprise up to an extra 20% of the initial grant. The funding is provided by the Torres Strait Regional Authority and then distributed to the various community councils. A proportion of the grant is held to provide for these "oncosts". The clause (5.2) relating to superannuation was further explained. It is the Policy of the Australian Taxation Office that participants in the CDEP scheme are not subject to superannuation levies at this time but the clause is inserted to avoid an amendment to the Award should that policy subsequently change.

It is also envisaged that there can be a dismissal from employment and that dismissal, in the absence of specific provisions in the proposed Award is governed by the provisions of the Act. No doubt, the CDEP employer is also governed by the requirements of the grant which may well reflect on the lawfulness or otherwise of the dismissal. It would appear that liability for compensation for any unfair dismissal would be met from the "oncosts" fund.

This Award needs to be read in the light of the submissions and exhibits or there may well be confusion with some of the provisions.

It is not proposed by the parties that the Award should make any provision for redundancy payments, at least at this stage, and the Commission's Termination Change and Redundancy Policy is not to be incorporated into this Award.

There is no award which regulates CDEP participants directly. Their standard entitlements are to be found in the Act and pay rates are determined by various awards and certified agreements. The communities are seeking guidance and direction as to minimum entitlements and they are supported in this venture by the Department of Employment, Training and Industrial Relations. This Award does not seek to impose new obligations, nor does it seek to increase existing wage rates or conditions of employment. It seeks to provide clarity. This Award provides for no more or less than compliance with awards. I am satisfied that the proposed Award complies with Principle 10 of the Commission's Statement of Principles relating to First Awards, published at (2003) 173 QGIG 1258. I am also satisfied that the proposed Award complies with the provisions of Chapter 5 of the Act.

For these reasons, on 3 August 2004, I granted the application and made an Award entitled Torres Strait Islander Communities - Community Development Employment Projects (Torres Strait) Award - State 2004 in the form in Schedule 1 of the application, as amended at the hearing, with an operative date from 3 August 2004.

B.J. BLADES, Commissioner.

Appearances:
Ms Y. D'Ath for The Australian Workers' Union of Employees, Queensland.
Mr R. Davidson, Agent for the Respondents.
Messrs R. Beer and R. Clough, for the Local Government Association of Queensland (Incorporated).

Hearing Details:
2004 6 July
3 August

Released: 4 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 156 - certification of an agreement

The Australian Workers' Union of Employees, Queensland AND Burleigh Marr Distributions Pty Ltd and Another (No. CA319 of 2004)

BIDVEST QUEENSLAND - CERTIFIED AGREEMENT 2003

COMMISSIONER BLADES

5 August 2004

Certified Agreement - Filed out of time - Date of Agreement improperly inserted, misleading the Commission - Extension of time granted - Agreement made with one Union - Second Union seeking to be heard under s. 155 of the Industrial Relations Act 1999 and to be made a party - Objection - Second Union also with coverage of employees - Second Union granted a hearing - Exclusive representation clause - Objection - Discrimination and Freedom of Association - Previous Certified Agreements - Exclusive representation clause provides grounds to refuse to certify - Parties, including second Union, provided with opportunity to take action to enable certification.

DECISION

This is an application, filed by The Australian Workers' Union of Employees, Queensland (AWU) for approval of the Bidvest Queensland - Certified Agreement 2003. The Agreement was made between Burleigh Marr Distributions Pty Ltd (the employer), and the AWU. At the hearing, and in accordance with prior notice, The National Union of Workers Industrial Union of Employees Queensland (NUW) sought leave to intervene and requested to be made a party to the Agreement. That application was opposed by the AWU but not by the employer.

The decision whether to allow the NUW to be heard under s. 155 of the *Industrial Relations Act 1999* (the Act) was reserved but for the sake of convenience, NUW was given a hearing on that application and permitted to address the Commission as if the NUW had established its rights under the section.

Application to extend the time for filing:

Of initial concern to the Commission was the application for an extension of time within which to file the application. An application to certify must be made within 21 days after the Agreement is signed by or for all the parties – s. 153. The application was filed on 13 July 2004. The affidavit of Michael West, General Manager of the employer, informs the Commission that the secret ballot was held “between (*sic*) January 8, 2004”. The application to certify was in the form of a sworn affidavit and dated 16 January 2004. The application commences with the following words:

“**TAKE NOTICE** that we the parties to

THE AGREEMENT, attachment A, having been made under the Industrial Relations Act 1999 on, **BETWEEN**

BURLEIGH MARR DISTRIBUTORS PTY LTD.....”.

A date namely “12 July 2004” has been handwritten between the word “on” and the comma, thus indicating that the Agreement was made on 12 July 2004. If such were the case, the Agreement was filed within time. The point is that the Agreement could not have been made on 12 July 2004 or else the date of the sworn affidavit of 16 January 2004 is incorrect. Furthermore, the affidavit of Michael West was sworn on 16 January 2004. It is clear that the date 12 July 2004 was inserted in a poor attempt to defeat the time restriction set by s. 153 of the Act.

It is not clear who was responsible for inserting the date. No one owned up to it. If it was inserted by the AWU, its insertion was wrong. If it was inserted by the employer, its insertion was wrong. If it was inserted by Registry staff, instructed by others, its insertion was wrong. It should not happen again. Any attempt to mislead the Commission is a serious matter.

Needless to say, it is the practice of the Commission to be sympathetic to applications to extend the time for filing of Agreements when delay is explained. Here, there was an explanation for the delay. There was some discourse between the AWU and the employer as to the meaning of a certain clause. In the light of that explanation, leave was given at the hearing for the time for filing to be extended to 13 July 2004.

Application by NUW to be heard – s. 155

Section 155 of the Act provides, so far as is relevant:

“(1) All relevant employee organisations are entitled to be heard on an application for the certification of an agreement.

(2) ...

(3) ...

(4) In this section –

“**relevant employee organisation**” means an employee organisation that –

(a) is bound by an award or industrial instrument that binds the employer, or would bind the employer apart from an award under the Commonwealth Act; or

(b) if there is no award or agreement that binds, or would bind, the employer – is entitled to represent the industrial interests of the relevant employees.”.

Section 156(1)(j) provides that the Commission must not certify an agreement unless it is satisfied that each employee organisation that is bound by the Award or Industrial Agreement that binds the employer is a party to the Agreement. Subsection (2) provides for some irrelevant exceptions.

The AWU objection to NUW being given a right to be heard is based on the premise that the Award that governs the employment of the employees is the *Cold Storage and Ice Making Award – State 2003* and that the NUW is not a party to that Award. That Award has application to all employers engaged in the callings of Cold Storage and/or Ice-Making and to their employees engaged on any operation in or in connection with or incidental to such callings. Under clause 1.7 of the Award, the parties bound are those employees, their employers and the Union, defined to mean the AWU, and its members.

It was submitted by NUW that the Union has a long association with the employer since 2000 and has agreements with the company across Australia. It is submitted that the company has recognised the NUW as an employee organisation which represents and has coverage of employees and the work on-site covered by the Agreement. Further, NUW held meetings with the membership on-site to formulate issues which were used to develop the log of claims and held report back meetings to inform membership about the advancement during the negotiating process. These negotiations were begun late last year. The employer was informed on 12 December of NUW’s intention to become bound by the proposed Agreement. The employer has agreed that it did meet with the NUW upon becoming aware that they had membership on the site. The employer has no objection either to the NUW “intervention” or to their application to be bound. In fact, the employer allows payroll deductions for the NUW for their members.

Despite what clause 1.7 of the Award appears to say, NUW referred the Commission to s. 124(1)(c) of the Act which provides:

“**124 Persons bound by award**

(1) An award binds –

(a) ...

(b) ...

(c) all organisations concerned with the calling to which the award applies; and ...”.

Nowhere in s. 124 is it stated that an award may be made applicable only to a stated Union. Section 123(2) provides that an award may state that it is in force (a) in a stated locality; or (b) for a stated period; or (c) in relation to a stated employer; or (d) in relation to a stated establishment or operation of a stated employer but makes no provision for it to state that it is in force for a stated Union. Clause 1.7, if it purports to exclude other organisations concerned with the calling to which the Award applies (an effect which it may not actually achieve), it appears to be inconsistent with the provisions of the Act and to the extent of any inconsistencies, the provisions of the Act apply – see e.g. *Property Sales Association of Queensland, Union of Employees* (1999) 162 QGIG 289 at 291 and *Macken The Law of Employment 4th ed* at p. 590.

The question then is whether the NUW is “concerned with the calling to which the award applies”.

The Award applies to the callings of “Cold Storage and/or Ice-Making”. The list of callings of NUW was exhibited as No. 4 and includes, in brief, “persons who are employed in or in connection with the reception, storage, packing, handling, wholesale selling, assembling and delivering of goods in wholesale warehouses, stores etc”. “Goods” appears to include fruit and vegetables but goes on to say “but so as not to limit the generality of variety of goods to be received, stored, packed, handled, sold assembled or delivered”. The list also includes “employees in factories where employees are engaged in blending, bottling, labelling or packing into tins, jars, cartons or other containers, any such articles as dry ice, fruit juice and fruit pulp, smoke coils, starch, rice, self-raising flour, maize meal, oatmeal, breakfast meal”, in fact many other foodstuffs are mentioned “or other articles or produce of a like nature”. The duties of employees of Burleigh Marr Distributors Pty Ltd include order picking, assembling and stock replenishment and receiving, despatching, distributing, sorting, checking and packing, documenting and recording of goods. The affidavit of Michael West says that the business which the Company is involved in is the warehouse and distribution of goods.

I am satisfied that the NUW has coverage of employees on this site. Evidence has been produced that there are a number of members on site who had requested that NUW look after their interests.

I am satisfied that NUW is an organisation that is bound by an Award that binds the employer because it is an organisation concerned with the calling to which the Award applies. I formally granted the NUW the right to be heard. I order that, by an appropriate amendment to the Agreement, NUW be a party to the Agreement.

Union recognition and Union membership:

Clause 2.5 of the proposed Agreement provides, so far as is relevant:

“For the duration of this Agreement the employer recognises that the Union shall have exclusive representation of all employees subject to this Agreement. This exclusive representation will extend to all terms and conditions of employment, whether those terms and conditions are subject to this Agreement or not.

It is the policy of the Employer that at the point of recruitment, all new employees will be provided with a Union membership application form and the employer undertakes upon authorisation, to deduct Union membership dues, as levied by the Union in accordance with its Rules, from the pay of employees who are members of the Union. Monies collected will be forwarded to the Union on a regular basis.”.

“Union” is defined in the introductory clause to mean “The Australian Workers’ Union of Employees, Queensland”.

I am informed that the proposed Agreement replaces a previous agreement and such a clause has been included in at least five of the previous Certified Agreements. When I raised the appropriateness of such a provision, NUW suggested that the clause is in breach of the Freedom of Association provisions of the Act.

The clause is clearly intended to give exclusive representation of all employees to the AWU. Specifically in relation to all terms and conditions of employment, whether subject to the Agreement or not, all other Unions are excluded whether they have representation rights or not.

How can an employer and a Union, together with the Queensland Industrial Relations Commission purportedly acting under Division 2 of Part 1 of Chapter 6 of the Act relating to certified agreements usurp the power of the Full Bench acting under s. 279 of the Act to make orders about representation rights of employee organisations? To my mind, it is inconceivable.

It was submitted on behalf of the employer that throughout the negotiations, the AWU sought to have such a clause inserted and the employer had no opposition to that proposal. It was submitted that the Agreement is subordinate legislation to the Act and if there is any conflict with the provisions as mentioned by the NUW, then the Act will obviously take precedence. But how does an employee reading the Certified Agreement get to know that?

Section 157(1)(a)(iii) of the Act requires the Commission to refuse to certify an agreement if it considers that a provision of the Agreement is inconsistent with a provision of Chapter 4, relating to Freedom of Association. Under ss (4), the Commission must refuse to certify an agreement if it considers a provision of the Agreement is a discriminatory provision.

What is a “discriminatory provision” is not readily apparent. If the phrase is taken in its wider import, there is clearly discrimination as between Unions but then that may not be unlawful and it is probably only unlawful discrimination that is the aim of the provision. If the phrase imports the meaning ascribed to “discrimination” under the *Anti-Discrimination Act 1991*, as it probably does, under s. 6 of that Act, one of the purposes is to promote equality of opportunity for everyone by protecting them from unfair discrimination in areas of activity including work. Discrimination can be on the basis of trade union activity – s. 7(1)(k).

Clause 5.7 of the proposed Agreement relating to Trade Union Training requires an application to be endorsed by the “Union” for an employee to attend courses and seminars for any approved “union” training. The term “Union” means only the AWU. Members of other Unions are left out. Members of the NUW do not have an entitlement to attend NUW training.

Chapter 4 of the Act contains the Freedom of Association provisions. One of the main purposes of the Chapter is to ensure that a person who is eligible to become a member of an industrial association may become or remain a member without fear of discrimination. Section 104 defines “engaging in conduct for a prohibited reason” and includes as a reason “is a member of an industrial association that is seeking better industrial conditions”. Section 105(2)(d) makes it unlawful, for a prohibited reason, to discriminate against a person in the conditions on which the person is offered a contract of employment and the provision will have application to a new employee. Section 105(2)(e) provides that a person must not, for a prohibited reason, engage in conduct:

“(e) in negotiating an agreement under chapter 6, part 1 (Certified Agreements) discriminate between the person’s employees because –

- (i) ...*
- (ii) some of the employees are members of a particular employee organisation, while others are not members of the organisation, or are members of a different employee organisation.”.*

Clause 2.5 of the proposed Agreement provides for exclusive representation of all employees which extends to all terms and conditions of employment, whether those terms and conditions are subject to the Agreement or not. Clause 1.6 contains a procedure for changes during the life of the Agreement. Representation of those employees seeking changes during the life of the Agreement who are members of other Unions is denied to them and because of that there may well be an infringement of Chapter 4. And what of the next Certified Agreement and its bargaining process?

Clause 2.4 is the "Settlement of Disputes" clause. It provides for dealings between the one Union and the employer and denies representation to NUW members by representatives of NUW. In clause 6.5(2), the counselling and warning procedure involves only one Union.

Section 110 of the Act permits an industrial instrument to contain an "encouragement provision", i.e. to join or maintain membership of an industrial association. Clause 2.5 is not an "encouragement provision", nor is it such a clause as was spoken about and permitted by Munro J in *Clout Engineering Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union* Print Q7710 (decision of 22 October 1998) where the relevant clause read (in part):

"27.2 All prospective and current employees will be strongly encouraged to join and maintain financial membership of the Union party to this agreement."

It is also difficult to see how the NUW can become a party to the proposed Agreement if the clauses identified and the definition of "Union" remain as they are.

Previous Certified Agreements:

The employer indicated that the proposed Agreement was one in a series of agreements going back for some time and that clause 2.5 had simply been carried forward. The proposed Agreement intends to cancel CA48 of 2001 and it is correct that clause 2.5 in that Agreement is identical. During the certification process of CA48 of 2001, the Commission was informed that the only change to the Agreement from the previous version was in relation to wage increases. That previous version was CA22 of 1999. In its original form in that Agreement, clause 2.5 provided:

"(1) For the duration of this Agreement the Employer recognises that the Union shall have exclusive representation of all employees subject to this Agreement. This exclusive representation will extend to all terms and conditions of employment, whether those terms and conditions are subject to this Agreement or not. It is the express wish of the Employer that all employees become members and continue as members of the Union and in an endeavour to assist the Union in this regard new employees who become subject to the Agreement may be approached to join the Union and the Union is encouraged to furnish such employees with an application to join the Union."

That clause caused the Commissioner who dealt with CA22 of 1999 under the provisions of the *Workplace Relations Act 1997* on 2 February 1999 some concern. The transcript on page 4 records that the first sentence had previously been disallowed (in other cases) as being "in conflict with Part 14 of the *Industrial Organisations Act* (Freedom of Association provisions) and s. 26 of the *Workplace Relations Act*". In accordance with the Commissioner's indication, a new clause was substituted. What was finally certified was as recorded above except that the first sentence read:

"For the duration of this Agreement the Employer recognises that the Union shall have the rights to exclusive representation of all employees subject to this Agreement."

Although I am unable to discern any real difference between the two versions, the authorised version did not find its way into the subsequent Agreement CA48 of 2001.

CA22 of 1999 cancelled CA562 of 1996. CA562 of 1999 contained a preference clause, not an encouragement provision nor an exclusive representation clause, giving preference of employment to financial members of the AWU as did its predecessors CA610 of 1995, CA91 of 1995 and CA30 of 1994.

My researches have uncovered numerous certified agreements containing exclusive representation clauses. The circumstances under which they were approved is not readily apparent but such clauses would appear to be illegal under any circumstances. Because such clauses have been certified in the past does not bind me on this occasion, especially in the face of an objection.

Section 331(a) of the Act permits the Commission to make a decision it considers just. Section 320(3) and (5) bring into play equity, good conscience and the substantial merits of the case and the public interest. Exclusive representation without a Full Bench order does not sit comfortably with any of these principles.

I am of the view that there are grounds to refuse to certify the Agreement. I provide the parties with an opportunity to take action to enable the Commission to certify the Agreement. I adjourn the application to a date to be fixed.

B.J. BLADES, Commissioner.

Hearing Details:

2004 29 July

Released: 5 August 2004

Appearances:

Ms T. Krarup for The Australian Workers' Union of Employees, Queensland.

Mr D. D'Arcy, Agnew D'Arcy Legal, for Burleigh Marr Distributions Pty Ltd trading as Bidvest Queensland.

Mr J. Cosgrove, with him Mr M. Furner, for The National Union of Workers Industrial Union of Employees Queensland.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

National Retail Association Limited, Union of Employers AND Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (No. B579 of 2004)

FAST FOOD INDUSTRY AWARD – SOUTH-EASTERN DIVISION 2003

COMMISSIONER THOMPSON

27 July 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 22 July 2004, this Commission orders that the said Award be amended as follows as from 3 August 2004:

By deleting clause 1.4 and inserting the following in lieu thereof:

“1.4 Award Coverage

This Award applies to all employees as defined in clause 1.6, engaged in, or in connection with, Fast Food Operations (as defined) throughout the South-Eastern Division of the State of Queensland, employed by; Toocom Pty Ltd trading as Hungry Jacks Qld, and franchises thereto; Amalgamated Food & Poultry Pty Ltd (Inc.) W.A. trading as Red Rooster and Big Rooster, franchises thereto; Chicken World; Dominos Pizza Australia Pty Ltd and franchises thereto; Eagle Boys Dial-a-Pizza Australia Pty Ltd, and franchises thereto; Uncle Tony’s Kebabs Pty Ltd trading as Uncle Tony’s Kebabs and franchises thereto; Brodies Enterprises Pty Ltd and Brodies Franchises Pty Ltd trading as Brodies Meal Makers and franchises thereto:

Provided that this Award shall not apply to employees covered by any other Award or Industrial Agreement, nor to any establishment which has a licence to sell alcohol.

This Award shall also apply to all employees as defined herein, engaged in, or in connection with, Fast Food Operations (as defined) throughout the South-Eastern Division of the State of Queensland, employed by Subway Systems Australia Pty Ltd and franchises thereto, and to their employers, provided that to accommodate the transition to this Award, employees engaged prior to 28 July 2004 will be exempt from clauses 6.5.1, 6.5.2 and 6.5.3 of this Award and will instead be subject to clauses 6.5.1 and 6.5.2 of the Retail Take-Away Food Award – South Eastern Division 2003. No other terms and conditions of the Retail Take-Away Food Award – South Eastern Division 2003 shall apply.”.

Dated 27 July 2004.

By the Commission,
[L.S.] G.D. SAVILL,
Acting Industrial Registrar.

Operative Date: 3 August 2004
Amendment – Award Coverage
Released: 5 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**National Retail Association Limited, Union of Employers AND
The Australian Workers’ Union of Australia, Queensland Branch (No. B578 of 2004)**

FAST FOOD INDUSTRY AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) 2003

COMMISSIONER THOMPSON

27 July 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 22 July 2004, this Commission orders that the said Award be amended as follows as from 28 July 2004:

By deleting clause 1.4 and inserting the following in lieu thereof:

“1.4 Coverage

1.4.1 This Award shall apply to all employees as defined herein, engaged in, or in connection with, fast food operations (as defined) throughout the State of Queensland excluding the South-Eastern Division, employed by Toocom Pty Ltd trading as Hungry Jacks Qld, and franchises thereto; Amalgamated Food & Poultry Pty Ltd (Inc.) W.A. trading as Red Rooster and Big Rooster, and franchises thereto; Chicken World; Domino’s Pizza Australia Pty Ltd, and franchises thereto; Eagle Boys Dial-a-Pizza Australia Pty Ltd, and franchises thereto; Brodies Enterprises Pty Ltd and Brodies Franchises Pty Ltd trading as Brodies Meal Makers and franchises thereto:

Provided that this Award shall not apply to employees covered by any other Award or Industrial Agreement, nor to any establishment which has a license to sell alcohol.

1.4.2 This Award shall also apply to all employees as defined herein, engaged in, or in connection with, fast food operations (as defined) throughout the State of Queensland excluding the South-Eastern Division, employed by Uncle Tony’s Kebabs Pty Ltd trading as Uncle Tony’s Kebabs and franchises thereto, and to their employers provided that employees engaged prior to 15 January 2000 shall retain the wage rates and conditions of employment prescribed in the Café, Restaurant and Catering Award – State (Excluding South-East Queensland) 2003.

1.4.3 This Award shall also apply to all employees as defined herein, engaged in, or in connection with, fast food operations (as defined) throughout the State of Queensland excluding the South-Eastern Division, employed by Subway Systems Australia Pty Ltd and franchises thereto, and to their employers provided that employees engaged prior to 28 July 2004 shall retain the wage rates and conditions of employment prescribed in the Café, Restaurant and Catering Award – State (Excluding South-East Queensland) 2003.”.

Dated 27 July 2004.

By the Commission,
[L.S.] G.D. SAVILL,
Acting Industrial Registrar.

Operative Date: 28 July 2004
Amendment – Award Coverage
Released: 5 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 130 – award review

SHEARING INDUSTRY AWARD – STATE 2003

(Gazette 21 November 2003)

(No. AR218 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

4 August 2004

AWARD REVIEW
(Correction of Error)

WHEREAS errors occurred in the Award as published in the *Queensland Government Industrial Gazette* of 21 November 2003, Vol. 174, No. 12, pages 1089-1117, the following corrections are made to be effective as from 6 October 2003:

1. By deleting clause 5.1 and inserting the following in lieu thereof:

“5.1 Wages

5.1.1 *Rates for shearing*

The minimum rates for shearing to be paid to employees shall be as follows:

(a) If rations ‘not found’:

For flock sheep (wethers, ewes, lambs) \$193.66 per 100.

For Rams (other than special stud Rams) and for Ram Stags, double that rate for flock sheep (\$387.32).

For Stud Ewes and their lambs (other than special studs) one and 1/4 times the rate for flock sheep (\$242.10).

For Double Fleeced sheep, one and 1/3rd times the rate for flock sheep (\$258.21).

For special studs as specially agreed, but so that if the engagement be per day the rate shall not be less than 75% of the rate for flock sheep (\$145.25) per day, with Cook and rations and shearing requisites found.

The employer shall charge the employee at not more than cost price, with carriage only added for all combs, cutters and shears supplied by the employer.

(a) If rations ‘found’:

The rates abovementioned less \$18.29 per day.

(b) Except that where work continues beyond the normal lunch break on the day of a cut-out payment shall be made for 4 runs.

5.1.2 *Rates for crutching*

(a) Piecework rates – if ‘not found’:

	Per 100 at Sheds (including experting and grinding allowance)	Per 100 at Sheds (excluding experting and grinding allowance)	Per 100 other than at Sheds (including experting and grinding allowance)	Per 100 other than at Sheds (excluding experting and grinding allowance)
	\$	\$	\$	\$
(i) Full crutching (as defined)	55.44	53.84	47.79	46.42
(ii) All other crutching	43.97	42.70	38.23	37.13
(iii) For wiggling or ringing	21.03	20.42	21.03	20.42
(iv) For either wiggling or ringing in addition to crutching	5.73	5.57	5.73	5.57
(v) For wiggling and ringing and polling	43.20	41.96	43.20	41.96
(vi) For wiggling and ringing	34.41	33.42	34.41	33.42
(vii) For wiggling and ringing in addition to crutching – crutching rate plus	9.56	9.28	9.56	9.28
(viii) For cleaning the belly of any ewe above the teats (not more than 2 blows of the handpiece or shears) – crutching rate plus	4.78	4.64	4.78	4.64

Per day – If ‘not found’:

(b) If the engagement be per day – \$147.06 per day.

Per day – If ‘found’:

(c) The rates prescribed above less \$18.29 per day.

5.1.3 *Rates for shed hands*

(a) The minimum rates for adult shed hands and generally useful employees (with 65 days or more experience) at the shearing or crutching, to be paid to employees shall be as follows:

Classification	Total Rate Per Run \$
Adults	
– With 65 days or more experience as a shed hand	34.12
– With less than 65 days experience as a shed hand	32.60
Juniors	
(i) 18-20 years (90%)	
– With 65 days or more experience as a shed hand	30.71
– With less than 65 days experience as a shed hand	29.34
(ii) Under 18 years (70%)	
– With 65 days or more experience as a shed hand	23.88
– With less than 65 days experience as a shed hand	22.82

(b) Shed hands shall be paid by the run provided that:

- (i) A minimum payment for 2 runs shall be made on any one day on which the employee attends for duty, except on the day of a cut-out where the minimum payment shall be as for 4 runs;
- (ii) Further, if sheep are voted wet at the commencement of the 3rd or 4th run, then they shall be paid for all completed runs on that day together with the run due to commence or partly completed at the time the sheep are voted wet;
- (iii) The minimum payment of 2 runs per day prescribed herein shall not apply where an employee is not required to attend for work because of wet weather, provided that the employee is advised on each preceding day that attendance will not be required, or if advised by the employer of a starting time more than 24 hours hence.

(c) Not more than one junior shall be employed at junior rates to every 3 adult shed hands:

Provided that in small sheds the employer may be permitted to employ one junior conditionally on an adult shed hand being also employed: Provided further, that in sheds where 2 or less shearers are employed it shall be permissible for a junior doing shed hand's work to be employed without an adult shed hand also being employed.

5.1.4 Rates for wool pressing

The minimum rates for pressing greasy wool to be paid to employees shall be as follows:

(a) Piecework

If rations 'not found':

	Total rate per bale \$	Total rate per kg c
(i) Pressing by hand	14.23	9.3373
(ii) Pressing by power	9.49	6.2249

The weights mentioned are the net weight of the wool.

For weighing and branding bales, 24c per bale additional.

The rates for stacking shall be by mutual arrangement.

Where scales are available all piecework wages for wool pressing shall be determined by the net weight of the wool:

Provided that if the total sum which the wool presser would receive under these rates amounts to less than \$48.87 per run multiplied by the number of runs that a time work employee would have been paid for, the employer shall pay the deficiency to the employee.

(b) Time work

The minimum rate to be paid to wool pressers shall be a weekly rate of ('not found') at a per run rate as follows:

Total rate (per run) \$48.87

Provided that where a wool presser engaged at time work rates would have earned more at a particular shearing than the minimum calculation (by multiplying the per run rate by the number of runs the employee would have been paid for) if the employee had been engaged at piecework rates, then the employee shall be paid off at the piecework rates pursuant to clauses 5.1.4(a)(i) and (ii) respectively.

(c) If rations 'found'

The rates abovementioned less \$18.29 per day.

(d) Additional penning-up duties

Where a wool presser is required to undertake penning-up duties in addition to wool pressing, such employee shall be entitled to the additional payment of \$5.68 for every 100 sheep penned-up where such duties are undertaken, with a minimum payment of \$39.73 per day. This rate shall not be used in the calculation of any appropriate overtime rates.

5.1.5 *Rates for cooks and cook's offsideers*

- (a) The minimum rates to be paid to employees for acting as cook in connection with shearing or crutching operations shall be \$12.29 per day ('found') for every person excepting themselves for whom the employee cooks, but, if the total amount which the cook would receive under clause 5.1.5 for the term of the employment amounts to less than \$159.76 per day ('found') for the work after paying the necessary offsideers, the employer shall pay the deficiency to the employee. A cook engaged for a half day shall be paid 50% of the applicable rate per day ('found') for every person for whom the employee cooks.
- (b) A cook's offsideer shall be paid by the cook at the rate of not less than 2/5ths of the rate paid to the cook, and where 2 offsideers are employed not less than 1/2 the rate paid to the cook, to be equally divided between them, per person, per week fixed by the Agreement, but in any case the weekly wage shall be made up to a minimum of \$537.90 per week.
- (c) The cook and any cook's offsideer shall be entitled to keep or to dispose of any of the tallow.
- (d) For the purpose of complying with the *WorkCover Queensland Act 1996* and any other Act requiring deductions from the employee's wages by the employer, the cook and any cook's offsideer shall be regarded as the employees of the owner, or where shearing is being done by contract, of the contractor.
- (e) Cooks may be engaged per 1/2 day. On the day prior to the commencement of shearing or crutching should the cook be required to prepare the evening meal or clean and prepare the kitchen for a normal start on the proceeding day, payment will be made at 50% of the appropriate daily or piecework rate.
- (f) On the day of cut-out a cook will be guaranteed 50% of the appropriate daily or piecework rate. However, should shearing proceed after the normal midday meal break a full day's wages will be payable.

5.1.6 *Calculation of mess account – all personnel*

All personnel shall be included in the calculation of the mess account where such personnel are eating in the mess.

For the purposes of clause 5.1.6 'personnel' shall include contractors, shearers, shed hands, wool pressers, cooks, cooks' offsideers, classers, station hands, station owners and station managers.

5.1.7 *Mess and cook charge*

In the case of suburban shearing operations no deduction shall be made from the wages of any employee where mess and cook are not set up.

5.1.8 The Award rates shall be adjusted in accordance with Schedule 4.

5.1.9 The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2003 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. [Disputed cases are to be referred to the Vice President]. This wage adjustment may be offset against any equivalent amount in rates of pay received arbitrated 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.

5.1.10 *Advance of wages*

The employer shall before the commencement of shearing appoint a certain day in each week when employees, on request, may be paid in advance against their earnings.

The amount advanced may be any portion of an employee's earnings in excess of one week's wages due at the time of the advance payment.

5.1.11 *Authorised deductions*

The employer shall, at the request of an employee, pay at any time any obligatory contribution or charitable donation on the employee's behalf out of wages due to the employee:

Provided that the amount of such payment shall be limited to the amount for the time being due in excess of one week's wages.

5.1.12 *Cheques*

Any cheque given to an employee by the employer shall be drawn on a local bank."

2. By deleting clause 5.5.1 and inserting the following in lieu thereof:

"5.5.1 Subject to the provisions of clause 4.1.4 of this Award, in the case of any employee stopped from working through breakage of machinery, except from any cause over which the employer has no control, e.g. power blackouts, the employer shall pay each such employee as follows:

(a) If 'found':

Total rate.....\$126.14

(b) If 'not found':

Total rate.....\$128.46".

By deleting Schedule 4 and inserting the following in lieu thereof:

"SCHEDULE 4

SHEARING INDUSTRY WAGES FORMULAE

Shearers Formula

	\$
Total Base Rate (including safety net adjustments)	479.10
Plus 20% piecework allowance – total base rate x 20%	95.82
Plus 23% casual loading – total base rate x 23%	110.19
Plus shearing industry allowance	170.20
• delays for wet weather	31.10
• travelling.....	49.10
• isolation	60.00
• rations	30.00
Total	855.31
Rates per 100 conversion – divide Total by 5	171.06
Plus disability allowance	1.00
Plus allowance for combs and cutters	13.60
Plus Handpiece allowance	2.50
Plus experting and grinding allowance.....	5.50
Total Rate per 100.....	193.66

Crutching Rates

Form of Crutching (calculated as a percentage of the per 100 shearing rate minus grinding allowance)	Per 100 Rate (including experting and the handpiece allowance) \$	Per 100 Rate (excluding experting and grinding allowance) \$
Full crutching at sheds: 29% of shearers rate per 100.....	55.44	53.84
All other crutching at sheds: 23% of shearers rate per 100.....	43.97	42.70
Full crutching other than at sheds: 25% of shearers rate per 100	47.79	46.42
All other crutching other than at sheds: 20% of shearers rate per 100	38.23	37.13
Wigging or Ringing: 11% of shearers rate per 100.....	21.03	20.42
Wigging and Ringing and Polling: 22.6% of shearers rate per 100.....	43.20	41.96
Wigging or Ringing in addition: 3% of shearers rate per 100	5.73	5.57
Wigging and Ringing: 18% of shearers rate per 100	34.41	33.42
Wigging and Ringing in addition: 5% of shearers rate per 100.....	9.56	9.28
Cleaning Bellies: 2.5% of shearers rate per 100	4.78	4.64
Lack of amenities allowance – \$6.00 per day		

Daily RateHandpiece provided by employees
\$

Not Found: daily rate x Shearers rate per 100 divided by old Shearers rate per 100	147.06
Found: Not Found rate less found deduction	128.77

LearnersPer Run
\$

Inexperienced adult shed hand rate	32.60
Experienced adult shed hand rate	34.12

Combs and Cutter AllowancePer Week
\$

62.25% of shearers combs and cutters allowance	8.47
------------------------------------------------------	------

Shearing Cook's Formula

	\$
Total Base Rate (including safety net adjustments)	482.32
Plus 23% casual loading	110.93
Plus 20% long hours allowance.....	96.46
Plus shearing industry allowance	109.10
• travelling.....	49.10
• isolation/discomfort	60.00
Total	798.82
Daily rate – Total divided by 5	159.76
Per Person per day rate: daily rate divided by 13.....	12.29

Shed Hands (Adults) Formula

With Less than 65 days working experience

	\$
Total Base Rate (including safety net adjustments)	416.16
Plus 23% casual loading – total base rate x 23%	95.72
Plus shearing industry allowance	140.20
• delays for wet weather	31.10
• travelling	49.10
• isolation	60.00
Total	652.08
Per Run – Total divided by 20	32.60

With more than 65 days working experience

	\$
Total Base Rate (including safety net adjustments)	440.83
Plus 23% casual loading – total base rate x 23%	101.39
Plus shearing industry allowance	140.20
• delays for wet weather	31.10
• travelling	49.10
• isolation	60.00
Total	682.42
Per Run – Total divided by 20	34.12

Shed Hands (Juniors)

18 to 20 years

	Per Run \$
• with 65 days or more experience as a shed hand – 90% of equivalent adult rate	30.71
• with less than 65 days experience as a shed hand – 90% of equivalent adult rate	29.34

Under 18 years

• with 65 days or more experience as a shed hand – 70% of equivalent adult rate	23.88
• with less than 65 days experience as a shed hand – 70% of equivalent adult rate	22.82

Wool Pressers Formula

	Piecework \$	Timework \$
Total Base Rate (including safety net adjustments)	577.43	656.29
Plus 20% piecework allowance	115.49	–
Plus 23% casual loading	132.81	150.95
Plus shearing industry allowance	170.20	170.20
• delays for wet weather	31.10	
• travelling	49.10	
• isolation	60.00	
• rations	30.00	
Total	995.92	977.44
Per run – Total divided by 20		48.87
By hand per bale – total divided by 70	14.23	
By hand per kilo – rate divided by 152.4	0.093373	
By power per bale – by hand per bale x 2/3	9.48667	
By power per kilo – rate divided by 152.4	0.062249	

Additional Rates

	Per Day \$
Found Deduction – Cook’s per person per day rate plus \$6.00 for rations	18.29
Breakdown Allowance – old rate x shearers rate per 100 divided by old shearers rate per 100:	
• not found, handpiece not provided	128.46
• found, handpiece not provided	126.14”

Dated 4 August 2004.

G. D. SAVILL,
Industrial Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 415(2)**Industrial Relations Regulation 2000 – s. 20***Queensland Fruit and Vegetable Growers, Union of Employers (No. U17 of 2004)****NOTICE OF APPLICATION FOR REGISTRATION AS AN EMPLOYER ORGANISATION**

NOTICE is hereby given that an application by the Queensland Fruit and Vegetable Growers, Union of Employers has been made for registration as an Industrial Organisation of Employers.

Interested persons may obtain a copy of the application from the Applicant.

All Notices of Opposition to such registration must be lodged with me within thirty-five days from the date of publication of this Notice.

Dated 9 August 2004.

G. SAVILL,
Industrial Registrar.