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No. 7

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
CA213/03	HVAC Process Service Pty Ltd and Electrical Trades Union of Employees of Australia, Queensland Branch – Certified Agreement 2003/2005	25/06/03	CA366/02
CA915/03	HVAC/HPS – Certified Agreement 2003	15/01/04	CA668/01
CA159/04	Lions Haven Residential Support Staff – Certified Agreement 2003	04/05/04	CA531/01
CA121/04	Rodney D Lovell t/a Universal Shelving – Certified Agreement	11/05/04	
CA178/04	ACI Plastics Packaging Rocklea EPS (Qld) – Certified Agreement	17/05/04	CA544/01
CA200/04	Pioneer Construction Materials Pty Ltd Roseneath Quarry – Certified Agreement 2004-2006	31/05/04	
CA218/04	Shardie Developments Pty Ltd – Certified Agreement	31/05/04	
CA219/04	Exel-Seal (Aust) Pty Ltd – Certified Agreement	31/05/04	CA424/02
CA220/04	Sherry's Industrial Coatings Pty Limited – Certified Agreement	31/05/04	
CA221/04	Mono Tile Contractors Pty Ltd – Certified Agreement	31/05/04	
CA222/04	Mono Tile Corporation Pty Ltd – Certified Agreement	31/05/04	
CA226/04	Friendly Society Private Hospital (Nursing Staff) – Certified Agreement No. 1 2004	31/05/04	
CA212/04	B & A Labour Hire Pty Ltd – Certified Agreement	03/06/04	
CA213/04	R & G Steelfixing Pty Ltd – Certified Agreement	03/06/04	
CA214/04	Vinidex Pty Limited (Queensland) – Certified Agreement 2004	03/06/04	CA880/03
CA217/04	Longreach Shire Council Employees – Certified Agreement	03/06/04	CA429/99

No/s	Title	Certified on and certificate issued	Cancelling
CA223/04	Bundaberg Christian College Limited – Certified Agreement 2004	03/06/04	CA7/02
CA229/04	Bowen Shire Council – Certified Agreement 2003	04/06/04	CA244/02

G.D. SAVILL
Acting Industrial Registrar

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INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(2) – appeal against decision of industrial magistrate

Ronald William Monaghan AND Robert Barry Spreadborough (No. C 13 of 2004)

PRESIDENT HALL

DECISION

8 June 2004

On 26 February 2002, Ronald William Monaghan made a complaint against Robert Barry Spreadborough who was said to have been a director of various companies which failed to pay wages due and payable to an employee, *viz.*, Mark Darren Jones, pursuant to the *Security Industry (Contractors) Award – State*, contrary to s. 623 of the *Industrial Relations Act 1999*. On the same day Mr Monaghan made a similar complaint against Mr Spreadborough relating to a failure to pay wages to another alleged employee William Alexander McHugh. On 5 December 2003, the Industrial Magistrate at Beenleigh struck out each of the complaints for want of prosecution. By an application to appeal filed 22 December 2003 (amended 16 April 2004) Mr Monaghan now seeks to reinstate each of the complaints. It is common ground that with the effluxion of time any fresh complaint would be statute barred.

There has been some issue as to the source of the Industrial Magistrate’s power to dismiss the complaints.

Early on, counsel for the respondent relied on s. 96A of the *Industrial Relations (Tribunals) Rules 2000* (the Rules). There can be no dispute that read literally s. 96A covers the situation which arose on 5 December 2003, when the complainant omitted to appear at a call over, notwithstanding that he had been served with notice that the complaints were to be mentioned and put on notice that non-appearance would expose him to the risk of having the complaints struck out. Section 96A provides:

“96A Failure to attend or to comply with directions order

- (1) This rule applies if–
 - (a) a party to a proceeding receives notice of a directions order made by an industrial magistrate specifying a time, date and place for a hearing or conference in the proceeding; and
 - (b) the party fail to attend at the hearing or conference.
- (2) This rule also applies if a party to a proceeding receives notice of a directions order made by an industrial magistrate and the party fails to comply with the order.
- (3) An industrial magistrate may–
 - (a) dismiss the proceedings; or
 - (b) make a further directions order; or
 - (c) make another order dealing with the proceeding the industrial magistrate considers appropriate; or
 - (d) make orders under paragraphs (b) and (c).”.

The stumbling block is that s. 96A is contained within Part 3 Division 1 of the Rules. By s. 90 Part 3 Division 1 applies only to the proceedings therein named. The proceedings before the Industrial Magistrate were not within the proceedings listed at s. 90.

The contention of counsel for the appellant is that the power of the Industrial Magistrate to dismiss a complaint for want of prosecution is to be found within s. 248(1) on the argument that the investiture of jurisdiction impliedly carries with it power to do all that is necessary for the effective exercise of the power. Reading the *Industrial Relations Act 1999* as a whole, there is no justification for implication of a power. Section 683(2) expressly provides:

“Proceedings before a magistrate are to be heard and decided summarily under the *Justices Act 1886*, but the Industrial Magistrates Court where the proceedings are taken is to be constituted by a magistrate sitting alone.”.

Section 147 of the *Justice Act 1886* provides:

“If at the time or place to which a hearing or further hearing is adjourned, either or both of the parties does not or do not appear personally or by counsel or solicitor, the justices then present may proceed to such hearing or further hearing as if such party or parties were present, or if the complainant does not appear the justices may dismiss the complaint with or without costs.”.

In my view it is s. 147 of the *Justices Act 1886* which was the source of the Industrial Magistrate’s power to dismiss the complaints. That I should add, was the view taken in *Newman v. Foamactions Pty Ltd* (2001) 168 QGIG 37, albeit without the full argument developed in this appeal.

The fulsome argument is entirely understandable. Whilst frankly and properly conceding that the inherent jurisdiction of Her Majesty’s superior courts of record to dismiss for want of prosecution involves the exercise of an unfettered discretion, counsel for the appellant seeks to derive comfort and support from the more recent cases dealing with the rule in *Birkett v. James* [1978] AC 297, especially *Cooper v. Hopgood and Ganim* [1999] 2 QdR 113. Whilst the guidance of the Court of Appeal is always helpful and the accumulated wisdom of the common law not lightly to be put aside, at the end of the day the discretion against the exercise of which this appeal is brought is sourced in a statute.

The features of the statutory discretion are:

- (a) it is to be exercised in the course of summary proceedings;
- (b) it is to be exercised in the context of criminal proceedings;
- (c) it is directed at a very specific form of conduct falling within the generic description "want of prosecution", viz. failure to appear; and
- (d) the section contemplates that the discretion may be exercised against a complainant because of a single failure to appear.

As in *Newman v. Foamaction Pty Ltd* (2001) 168 QGIG 37 there is no transcript and no record of reasons. Counsel for the appellant accepts that to succeed he must show that the exercise of discretion was, in the result, so unreasonable or plainly unjust that one may infer that there was a failure by the Industrial Magistrate properly to exercise the discretion which s. 147 reposes in the Industrial Magistrates Court. Counsel concedes that on the face of the Bench Sheet the decision was unimpeachable. As a matter of first impression, that seems to me that to be so.

The Bench Sheet shows that the appellant failed to attend at the call over, not only on 5 December 2003, but also in the months of August, September, October and November of 2003. The Bench Sheet also shows that each of the complaints had been adjourned on seven occasions and that on two occasions hearing dates had been vacated. Evidence which has been allowed by consent shows that there is another story to be told. The complainant, or more accurately the industrial officer who was acting for the complainant who was and is the secretary of a major employee organisation, was unaware that the complaints were to be mentioned in September, October and November of 2003.

The omission to attend at the call over in August 2003 and December 2003 was attributable to simple inadvertence and neglect. The complaints were adjourned so frequently because another matter involving the employee organisation and the respondent was in the process of being heard. That matter involved issues of law which would arise also on each of the two complaints with which this appeal is concerned. It was for that reason that the appellant had sought the adjournment of the complaints on some five occasions. On each occasion, the respondent had consented to the adjournment. On one occasion, the respondent had sought an adjournment for the same reason. (The Industrial Magistrate hearing the third complaint initiated the seventh adjournment.)

Whilst I accept the submission of Counsel for the respondent that there was no agreement between the complainant and the respondent that the complaints would be adjourned until the hearing of the other matter was concluded – and Counsel for the appellant does not contend that there was such an agreement – there was certainly conduct which a competition lawyer would characterise as parallel conduct engaged in with knowledge of the purpose which the conduct was designed to achieve. Indeed, because some of the mentioned dates coincided with the hearing of the other matter there is transcript available which shows that the purpose of the adjournment was disclosed to the Industrial Magistrate dealing with the adjournment. The pattern of adjournments is (plainly) adequately explained. The difficulty which I have with the submission is that it seems to me to demolish a case upon which the Industrial Magistrate did not act.

It is in the nature of the power at s. 147 that it will be exercised in the absence of a party. An absent party may well have a perfectly satisfactory explanation for the failure to appear. In my view the Bench Sheet shows that the various Industrial Magistrates who dealt with the matter in October, November and December of 2003, did not act against the complaint because of an unexplained absence. In October, the Acting Industrial Magistrate sought to give the appellant written notice of the November call over and advice that he was at risk of having the matter struck out if he did not attend. The Industrial Magistrate who dealt with the matter in November 2003 grasped the point that receipt of any such written advice could not be proved. The Industrial Magistrate made arrangements for the appellant to be served with notice of the December 2003 call over and advised that he was at risk of having the complaint struck out if he did not appear. It was the non-appearance in December 2003 which caused the complaints to be struck out.

In my view such an exercise of discretion was neither unreasonable nor plainly unjust. The complaints involved serious criminal matters. Whilst the failure to appear has not been shown to prejudice the respondent's defence of either complaint, a defendant burdened with the distress of a criminal proceeding is prejudiced if required to attend that proceedings which a complainant does not attend. There has always been a public interest in the avoidance of delay in criminal prosecution. I doubt that it may be distilled from *Cooper v Hopgood and Ganim* [1999] 2 QdR 113 that a finding of "intentional or contumelious" conduct is a prerequisite to an order striking out a matter for want of prosecution. If such a proposition may properly be distilled, it seems to me that the proposition cannot be grafted onto s. 147. It will be a rare case in which an Industrial Magistrate is able to make a finding about an absent complainant's intent. The statutory discretion cannot properly be subjected to constraints which would frustrate it. If contumelious conduct be thought necessary, it seems to me that the appellant's conduct was contumelious.

The contumacy is to be found not in any disrespect shown to the Industrial Magistrate but in the disregard of the order requiring the appellant's appearance. This is a classic case of an Industrial Magistrate exercising the statutory discretion pursuant to s. 147 to ensure the integrity of the criminal process. Wages may be recovered by civil process. Those who choose to launch criminal proceedings must accept the burden of attending at the court house when called.

I dismiss the appeal.

I reserve all questions about costs.

Dated 8 June 2004.

D.R. HALL, President.

Released: 8 June 2004

Appearances:
Mr J. Merrel instructed by Hall Payne for the appellant.
Ms S. Moody instructed by Jeff Thomas & Associates for the respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Len DeCandia AND Hallmark Cards Australia Limited (No. 2) (No. B1288 of 2003)

VICE PRESIDENT LINNANE

4 June 2004

DECISION

- [1] This is an application by Len DeCandia (Applicant) pursuant to s. 74 of the *Industrial Relations Act 1999* seeking reinstatement to his former position as account manager with Hallmark Cards Australia Limited (Respondent). On 16 April 2004 I released a decision in this matter: see *DeCandia v. Hallmark Cards Australia Limited* (2004) 175 QGIG 1376. In that decision I found the dismissal of the Applicant to be unfair. I rely upon the findings and reasons outlined in that decision.
- [2] I reserved my decision on remedy to enable the Respondent to adduce evidence on why reinstatement was impracticable. The Respondent accepted that offer and gave an undertaking to the Applicant and the Commission that it would pay the Applicant's costs incurred as a result of the additional hearing. Those costs are to be paid in accordance with Scale G of the Magistrates Court Scale of Costs: see Exhibit 19.
- [3] The Respondent adduced further evidence from Phillip Johnston, the Respondent's Queensland State Sales Manager (Exhibit 17). The Applicant also provided a further Affidavit (Exhibit 18). Both Mr Shepley, Counsel for the Applicant, and Mr Watson, Counsel for the Respondent, provided extensive submissions.
- [4] In light of the further evidence I am satisfied that reinstatement and re-employment of the Applicant is impracticable. As I indicated on transcript had I not had a concern about the impracticability of reinstating the Applicant I would not have given the Respondent an opportunity to adduce further evidence. I am convinced that the trust relationship between Mr Johnston and the Applicant could not be restored sufficiently to enable the Applicant to work relatively unsupervised as an account manager.
- [5] In the earlier decision I detailed my position on compensation should I be convinced of the impracticability of reinstatement and re-employment. The further evidence of the Applicant that he has not been employed since 24 July 2003 (i.e. the date of his dismissal) and that he has not derived any income from employment since that time strengthens the position I stated in paragraph [66] of the earlier decision.
- [6] In the circumstances I consider that the Applicant, having been out of employment for a period of ten months and having received no income, including no social security payments, during that time, is entitled to compensation for the six month maximum period. Whilst the maximum compensation is not reserved for unfair dismissals at the most outrageous end of the spectrum of dismissals, I do consider that I should, in this instance, deduct the four weeks' pay in lieu of notice which the Applicant received on termination.
- [7] The Applicant's salary at the time of dismissal was \$892.58 per week.
- [8] I therefore order the Respondent to pay the Applicant an amount of \$19,636.76 being 22 weeks @ \$892.58 per week. The amount is to be paid within twenty-two days of release of this decision.

Order accordingly.

D.M. LINNANE, Vice President.

Hearing Details:
2004 20 May

Released: 4 June 2004

Appearances:

Mr J. Shepley, instructed by Primrose Couper Cronin Rudkin Lawyers, for the Applicant.

Mr K. Watson, instructed by the Australian Industry Group, Industrial Organisation of Employers (Queensland), for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Deborah Watts AND LJ Hooker Sunnybank Hills (No. B220 of 2004)

COMMISSIONER THOMPSON

3 June 2004

Application for reinstatement – Preliminary issue – Extension of time – Witness evidence – Extension of time granted.

DECISION

Background

In this matter, LJ Hooker Sunnybank Hills (respondent) sought to have the Commission determine that an application filed by Ms Deborah Watts (applicant) on 17 February 2004 not proceed based upon the application falling some six (6) days outside the statutory 21 days provided for at s. 74(2)(a) of the *Industrial Relations Act 1999* (the Act).

Respondent

The respondent represented by Ms Cheryl-Ann Laird of Livingstones (Australia), presented evidence from two witnesses, those being Ms Jessica Marcs, a Research Consultant with Livingstones, and Ms Maria Mulchay, a Barrister at Law.

Marcs

Her evidence went to inquiries made in respect of advertisements placed in the 18 February 2004 edition of the Southern Star Newspaper which, according to her evidence, would have had to be presented to the newspaper office by no later than 5.00 p.m. on 11 February 2004.

Later in her affidavit, at paragraph 14, she stated:

“Therefore, for publication on 18 February 2004, the latest date for submission of proofs, in accordance with the published guidelines was 9.00 a.m. on Thursday 12 February 2004.”

Additionally, an attachment to the affidavit which had been lifted from the “Quest Community Newspapers’ Real Estate Advertising Specifications” web site was presented to the Commission.

The thrust of the witnesses evidence went to two (2) properties advertised for sale under the applicant's name (for her new employer) that appeared in the 18 February 2004 edition of the Southern Star Newspaper.

Mulchay

Ms Mulchay gave evidence via telephone due to reasons relating to a medical condition.

Her evidence went to the detail surrounding contact made by the applicant on 13 February 2004 requesting advice in relation to an unfair dismissal application.

The applicant, at the point of contact, was advised of the payment arrangements with an appointment being made for later that evening.

The applicant attended the appointment, at that time, with the witness acknowledging that the application would be outside the 21 days filing period.

There was agreement that the applicant would make further contact with her on the following day, however this did not occur.

Contact was made by the witness on 15 February 2004 where it was agreed that the applicant would attend the witnesses Chambers at 10.00 a.m. on 16 February 2004 to finalise the application.

The applicant eventually arrived late (at around 10.40 a.m.) and informed the witness that she had found another lawyer and would not require further assistance, from the witness.

The applicant had stated to the witness that the lateness of the application didn't matter as the Commission had verbally advised that "it was fine to be late".

Ms Mulchay later contacted the respondent and spoke to an "unnamed" person about the application to be filed by the applicant.

On 1 March 2004, Ms Mulchay forwarded correspondence to the Industrial Registrar giving an explanation of her involvement with the applicant in this matter.

Ms Mulchay, in response to a question from the Bench, stated that, as at 1 March 2004, she had not seen the application (page 65, line 10 of transcript):

“Commissioner: Have you seen the application that was filed by the applicant in this matter?”

Mulchay: Not ultimately whatever was filed eventually. No.

Commissioner: So you've never seen it?

Mulchay: No.

Commissioner: So that where your letter says, and I know you've answered this before, but "I am writing with regard to some serious concerns I have in relation to inaccurate information which has come to my notice which is contained in the application for reinstatement."?

Mulchay: I've never actually seen in front of me the application. No.

Commissioner: So you've written a letter to the Industrial Registrar on the basis of something that might be in an application that might be filed. How did you know the application had been filed?

Mulchay: Well, the applicant told me she was going to file the application.”.

Yet, at paragraph 7 of the letter, stated:

“This letter is by way of notification of the inaccuracies contained in the application to which I take exception and view the misrepresentations with seriousness.”.

Note: The evidence of the witness appears to be in direct conflict with the correspondence forwarded to the Industrial Registrar.

Applicant

The applicant was self represented and relied upon evidence given by Dr Sam Khalil, Ms Maria Dunn, Mr Les Marshall, in addition to her own evidence.

Watts

Ms Watts' evidence was that her dismissal was affected on 21 January 2004, with her further alleging that she was "physically assaulted and humiliated in the presence of a number of [my] work colleagues", at the time of the termination.

Shortly thereafter, she contacted the Industrial Registry and was forwarded an Application for Reinstatement Kit.

It was her evidence that her state of mind at that time made it difficult to deal with the situation.

Her daughter's upcoming wedding (on 7 February 2004) had placed certain demands upon her including:

- making of seven (7) bridesmaids dresses
- making of the wedding cake
- organising the reception.

Additionally, she had concerns in respect of her financial position, now that her employment had been terminated.

Initially, she waited a number of days (unspecified) for Mr Peter Crowther (from the respondent) to call and apologise, but this was not forthcoming.

On 29 January 2004, she contacted Mr Marshall of Remax Community Realty seeking employment and, on the same day, signed a contract of employment.

A few days later, on 2 February 2004, she sought medical treatment for anxiety and was prescribed medication.

After the wedding, she attempted to complete the reinstatement application form, but was still having some difficulty.

It was at this time that she learnt of the 21 day time period and, on that basis, decided to seek legal assistance.

Contact was made with Ms Mulchay on 13 February 2004, and whilst she found the encounter overall a "stressful experience", on 16 February 2004 she left Ms Mulchay's Chambers with the completed application form.

Further legal advice was obtained from another provider, with the application proper being lodged the following day.

Khalil

Dr Khalil was the medical practitioner visited by the applicant on 2 February 2004 and his evidence confirmed the consultation and the treatment prescribed to the applicant.

Dunn

Ms Dunn, the eldest daughter of the applicant, gave evidence of involvement with her mother immediately after the dismissal.

She provided confirmation as to the steps undertaken by the applicant to obtain the reinstatement application forms and of the applicant's situation in respect of organising her sister's wedding.

After the wedding, her mother became aware of the 21 day time limit and on the suggestion of the witness, sought legal assistance.

At paragraph 7 of her affidavit, she went to some detail relating to discussions with her mother over the advice from Ms Mulchay:

"Ms Mulchay made an appointment to see Mum on the Sunday but this was cancelled because Ms Mulchay would not proceed until she was paid several hundred dollars in CASH, Mum explained this was not possible until Monday because she would have to go to the bank in order to make a withdrawal. An appointment was then made for 10.00 a.m. Monday morning. Mum was really concerned with handing over all this money and mostly with Ms Mulchay's attitude and decided she would contact the Queensland Law Society to seek advice on whom she should see for legal advice, she was given a few names one of which was McCrossans [Macrossans]."

The witness recalled taking a phone call from Ms Mulchay on the Monday (16 February 2004) and then accompanying her mother to Ms Mulchay's Chambers.

Marshall

Mr Marshall, the Principal of Remax Community Realty, gave evidence of receiving a telephone call from the applicant on 29 January 2004 requesting an interview for employment.

He immediately accepted her request as the applicant was known as a successful Real Estate person.

At the interview, the applicant informed him of the circumstances of her termination by the respondent, and of the pressure associated with the whole situation including her daughter's upcoming wedding.

The applicant signed a standard employment contract at the conclusion of the meeting on the understanding that she would commence employment in mid February 2004.

There was a requirement for the applicant to supply photographs of herself prior to commencing employment, so as they could appear in the Southern Star Newspaper to coincide with her starting date.

Mr Marshall, in giving evidence on the demeanour of the applicant at the interview, stated at page 73, line 3 of transcript:

"Laird: But it wasn't – I put it to you that that wasn't impacting upon her ability to communicate and enter into a contract with you?"

Marshall: The lady in question at the time gave me the impression that she was extremely business like, knew exactly what she wanted to do and just wanted to get on with it because she had other things she had to take care of.

Laird: Did she ask you very many questions in the interview?"

Marshall: I imagine there would be, it just seemed – I imagine there would have been some questions but it didn't seem to me that there were a lot of questions asked. The proposal – employment proposal had been put to a lot of people in writing. I imagine it would be very well known that we were offering and I imagine she was very clear on that when she arrived."

Submissions

Respondent

Ms Laird, in submissions from the bar table, raised a number of matters including:

- relevant provisions of the Act
- accepted criteria – *Breust v Qantas Airways Limited* (1995) 149 QGIG 777 decision

- limited prospects of the application in the substantive matter
- failure of the applicant to meet the 21 day time frame
- reference to a number of authorities
- merits of the case argument
- summary – page 86, line 15 of transcript:

“We submit that there is nothing compelling in the reasons presented by the applicant, either in her written submissions or in evidence today. The applicant’s prioritising of her personal commitments over the completion of the application are not, in our submission, compelling. We would urge the Commission to exercise its discretion and not allow an extension of time. If it pleases the Commission.”

Applicant

The submissions of Ms Watts were brief and went to the substance of her arguments.

She had been under personal and emotional pressure to the extent that she was unable to complete the application forms in the 21 day time period.

Reference was made to legal advice received from Ms Mulchay and her state of mind at that time.

Conclusion

The Act at s. 74(2)(a) states that an application for reinstatement must be made 21 days after the dismissal takes effect, however at clause (b) of the same section, a further period of time extending an application can be determined by the Commission.

In this matter, the respondent has sought to prevent the application proceeding further for reasons relating to the filing of the application six (6) days past the statutory time allowed for in the Act.

The respondent has relied upon certain authorities to support their argument which includes:

- *Brown v Melinda Investments Pty Ltd* (2002) 170 QGIG 392
- *Butler v Leeson Pty Ltd* (2002) 171 QGIG 772
- *Robert Paterson v Medical Benefits Fund of Australia Limited* (1998) 159 QGIG 232
- *Brisbane South Regional Health Authority v Taylor* (1996) HCA 25 (2 October 1996)

In respect of the authorities in the matters of *Brown v Melinda Investments Pty Ltd* and *Butler v Leeson Pty Ltd*, the Commission acknowledges the points relied upon by the respondent, however the periods of time past the 21 day cut off were 53 and 119 days respectively which, in the view of the Commission, is a significant factor when compared to the 6 days in this application.

Additionally, the respondent relied upon the decision in *Breust v Qantas Airways Limited* (1995) 149 QGIG 777 which is now almost universally accepted as appropriate guidelines in considerations of this nature.

The applicant simply put forward a case for the extension to be granted based upon reasons which went to her state of mind, health and the pressure associated with her “hands on” role in arranging her daughter’s wedding.

The Commission in reaching a decision in this matter relies upon the criteria in *Breust* in addition to giving consideration to the merits of the case.

Length of the Delay

It is clear that the Act stipulates a 21 day statutory period from the date of termination in which an application for reinstatement must be lodged with the Registry.

The Act is also definite in that it allows the Commission to extend that period should it choose.

The period of time in question is some six (6) days outside the 21 day limit which, in the view of the Commission, cannot be regarded as an extensive amount of time beyond the limit.

Explanation for the Delay

The applicant acknowledged that she received a Reinstatement Application Kit just two days after her termination.

Ms Laird drew the attention of the Commission to the following wording that appeared in the middle column of page two of the documentation:

“FILING

Written applications for reinstatement must be filed with the Industrial Registry in Brisbane within 21 days after dismissal.”

For the purposes of completeness, it should be recorded that, in the next column, the following appears:

“EXTENSION OF TIME

If an application is filed outside the 21 day time limit, approval for an extension of time must be obtained from the Commission before it can proceed to hearing.

Conciliation conferences must be conducted in all cases before a request can be lodged for a hearing. An application filed out of time cannot progress to the hearing stage unless an application for extension of time is filed and subsequently granted by the Commission.

Requests for an extension of time are considered individually on a case by case basis. Only members of the Commission have the power to grant an extension of time, and there can be no guarantee that such an application will be granted.”.

The applicant did not rely upon ignorance of the 21 day period acknowledging an awareness from just after 7 February 2004 of the provision in the Act.

It was not disputed that 11 February 2004 was the final day of the 21 day period.

The respondent placed significant importance upon the applicant negotiating a contract of employment with her “new” employer on 29 January 2004 however, the evidence before the Commission would indicate that the applicant signed a standard contract which was not subject to alteration or negotiation and, in reality, an acceptance of conditions determined by the employer, therefore not an issue of substance as argued by the respondent.

Further reliance was placed upon two advertisements that appeared in the Southern Star Newspaper on 18 February 2004 in which the applicant appears as an agent for two properties.

The evidence, in respect of this matter, was that each of the properties had been marketed by the applicant for two months prior (whilst with the respondent) and the resigning as agent was “as easy” as giving each of the owners new forms to be signed.

The owners of the two (2) properties were firstly her daughter, and then a person for whom she had previously sold numerous properties.

The applicant’s evidence was uncontested in respect of the two properties in question and, therefore, must stand.

The applicant raised the issue of her health and subsequent visit to a medical practitioner.

The Commission accepts that whilst the applicant was not totally incapacitated, her health could reasonably be construed to have been a factor in her having difficulty in completing the relevant paperwork.

The other major event relied upon by the applicant was the workload associated with her daughter’s upcoming wedding.

The wedding was to take place just 17 days after the date of termination and the organisational responsibilities of the applicant for that event were of such a nature that the Commission would accept that in this period her time was consumed to the maximum extent, as those who have been in a similar position could readily identify.

Prejudice to the applicant if the extension of time is not granted

The most obvious prejudice is that not to grant an extension of time would extinguish the applicant’s right to contest her termination.

In this matter, there is a serious allegation that the principal of the respondent business physically assaulted the applicant at the point of termination.

Whilst evidence before the proceedings would indicate that the Police did not lay charges in respect of the allegations, it would be unreasonable for the applicant not to have the opportunity to have such allegations fully considered by the Commission.

Prejudice to the respondent if the extension of time is granted

The granting of the extension of time would undoubtedly place the respondent in a position where they would be required to respond to the application and therefore incur the financial costs associated with such an action, as is the case for applications filed within the 21 days.

Note: There are of course the allegations of physical assault that have been levelled and it may also be in the interest of the respondent to have such allegations tested in the tribunal.

Any relevant conduct of the respondent

In relation to the extension of time issue, the Commission does not find any fault in the conduct of the respondent that would have impact on the finding reached by the Commission.

Merits of the Case

Neither party sought to introduce evidence in respect of the substantive matter and, as such, the Commission is limited in considerations in respect of the prospects of success or otherwise if the extension is granted.

There was evidence that the applicant “signed on” for employment with her current employer on 29 January 2004 as a contract employee, however no evidence before the Commission in respect of income earned or not earned by the applicant.

The Commission is of the view that *prima facie* there are sufficient grounds for this matter going forward.

Finding

The Commission, having considered the evidence, material and submissions before the proceedings, determines in line with the provisions of s. 74(2)(b) of the Act that the application by the respondent to discontinue the application due to being out of time should fail.

Accordingly, the Commission exercises its discretionary power and allows for the extension of time, so as to allow the application to proceed.

The applicant should take the appropriate steps to have the application referred back to call-over.

I order accordingly.

J.M. THOMPSON, Commissioner.

Appearances:

Ms D. Watts, Applicant.

Ms C. Laird, of Livingstones (Australia), for the Respondent.

Hearing Details:

2004 21 and 28 May

Released: 3 June 2004

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Roma-Bungil Showgrounds and Saleyards Board AND Gordon Fassifern Hobbs (No. B659 of 2004)

COMMISSIONER EDWARDS

8 June 2004

Costs Awarded by Commission – Application for Adjournment and Further Directions – No New Evidence – Amount of Costs Determined.

DECISION

On 20 May 2004, by a decision now reported at 176 QGIG 118-120, I refused an application for adjournment and further directions in relation to application B1874 of 2003. Application B1874 of 2003 is an application by Gordon Fassifern Hobbs for reinstatement to his former position with the Roma-Bungil Showgrounds and Saleyards Board (the Board). In the decision of 20 May 2004 I determined to award costs to Mr Hobbs and by this decision will determine an appropriate amount.

In my decision I stated:

“It is passing strange that the respondent by means of the Acting CEO who is the officer responsible under s. 466 of the Local Government Act 1993 did not provide evidence in relation to matters, such as:

- (a) accounting and support documentation to challenge the evidence of Mr Hobbs regarding the ordering of some \$20,000 worth of gravel and the resulting documentation enabling payment;
- (b) decision by the Board regarding plans, layout and types of gardens, whether flower, vegetable or other;
- (c) Board policies on sale and disposal of all items whether of monetary value or otherwise;
- (d) Board policies in relation to employees performing duties while on leave but especially sick leave; and
- (e) Board policies on the conduct of sales, whether special or otherwise and the authority to conduct sales and the payment of prescribed fees (if any).

The Commission accepts the submission of Mr Wright that no new evidence has been offered by the Board. At the time of the decision of 2 April 2004 the Commission was aware of:

- (a) the role of the CEO (Mr Saxvik) in the dismissal process; and
- (b) all documents in the possession of the Board could be provided by the Acting CEO.”.

By letter of 4 June 2004 the legal representatives for the Board advised that it remains their submission that the issue of costs ought not be considered by the Commission until the applications to appeal (or at least the Application to Appeal the decision in Case No. B659 of 2004, from which the subject order for costs arises) have been decided. The Commission is unaware of any document that precludes the finalisation of this matter. The Commission by its decision of 20 May 2004 indicated that if the parties were unable to agree on an appropriate amount the parties were directed to advise the Industrial Registrar to enable the Commission to make a determination.

I hereby make such determination.

The Commission is of the view that costs were incurred because of the unreasonable acts of the Board in filing the application when no new evidence in relation to the reasons for an adjournment was presented.

The Commission relies on Rule 66 of the Industrial Relations (Tribunals) Rules 2000 wherein the Commission may have regard to the scale of costs for Magistrates Courts under the Uniform Civil Procedure Rules 1999. Reference is made to 174 QGIG 1131 in which Blades C states:

“The Commission’s discretion in relation to quantum is not fettered by that scale but that scale reveals what could be considered appropriate to award in cases of this size.”.

On consideration of all the material and documentation presented, the Commission is satisfied that the claim for the amount of \$4,325.00 relates to this case.

The Commission orders that the amount of \$4,325.00 be paid by Roma-Bungil Showgrounds and Saleyards Board to Gordon Fassifern Hobbs within 22 days of the date of release of this decision.

K.L. EDWARDS, Commissioner.

Appearances:
Mr R. Beer of Local Government Association of Queensland (Incorporated) on behalf of the applicant.
Mr B. Wright of Jonathan C. Whiting & Associates on behalf of the respondent.

Released: 8 June 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

The Australian Workers’ Union of Employees, Queensland AND The Queensland Chamber of Fruit and Vegetable Industries Co-Operative (Union of Employers) Limited and Others (No. B1589 of 2003)

FRUIT AND VEGETABLE GROWING INDUSTRY AWARD – STATE 2002

DEPUTY PRESIDENT SWAN

27 November 2003

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 20, 27 and November 2003, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.9 (Termination of Employment), 4.10 (Introduction of Changes) and 4.11 (Redundancy) and inserting the following in lieu thereof:

“4.9 Termination of employment*4.9.1 Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.9.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years.....	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least two years' continuous service with the employer shall be entitled to an additional week's notice.

- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.9.3 Notice of termination by employee

The notice of termination required to be given by an employee shall be 2 days. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.9.2(d) for a period of notice of 2 days.

- 4.9.4 The periods of notice prescribed in clauses 4.9.2 and 4.9.3 shall not be given during periods of annual leave, unless mutually agreed between the employer and the employee concerned.

4.9.5 Time off during notice period

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.10 Introduction of changes*4.10.1 Employer's duty to notify*

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.10.2 Employer's duty to consult over change

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.10.1.

- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.11 Redundancy

4.11.1 Consultation before terminations

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.11.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse affects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.11.2 Transfer to lower paid duties

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.11.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.9.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.11.3 Transmission of business

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmitter) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmitter of the business, becomes an employee of the transmittee:
- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.11.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.11.4 Time off during notice period

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.11, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.11.5 Notice to Centrelink

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.11.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.11.6 Severance pay

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.9.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.11.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

(b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.11.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.11.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.11.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.11.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.11.10 *Employees with less than one year's service*

Clause 4.11 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.11.11 *Employees exempted*

Clause 4.11 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.11.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.11 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.11.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.11.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmitter) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:

- (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
- (B) which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transferee.

(b) The Commission may amend clause 4.11.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.11.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

Dated 27 November 2003.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 26 May 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers (No. B1589 of 2003)**

GRAINCO AUSTRALIA LIMITED AWARD – QUEENSLAND 2003

DEPUTY PRESIDENT SWAN

27 November 2003

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 27 November 2003, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.6 (Termination of Employment), 4.7 (Introduction of Changes) and 4.8 (Redundancy) and inserting the following in lieu thereof:

“4.6 Termination of employment

4.6.1 *Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.6.2 *Termination by employer*

(a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years.....	3 weeks
More than 5 years	4 weeks

(b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least two years' continuous service with the employer shall be entitled to an additional week's notice.

(c) Payment in lieu of notice shall be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

(e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.6.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be one week. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.6.2(d) for a period of notice of one week.

4.6.4 *Time off during notice period*

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.7 **Introduction of changes**

4.7.1 *Employer's duty to notify*

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.7.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.7.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.8 **Redundancy**

4.8.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.8.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse affects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.8.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.8.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.6.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.8.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmitter) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmitter of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.

- (b) In clause 4.8.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.8.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.8.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.8.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.8.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.8.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.6.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.8.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

 Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.8.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.8.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.8.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.8.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.8.10 *Employees with less than one year's service*

Clause 4.8 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.8.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.8 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.8.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.8.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.8.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.8.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

Dated 27 November 2003.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 26 May 2004

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers' Union of Employees, Queensland AND Queensland Hotels Association,
Union of Employers and Others (No. B1589 of 2003)**

**HOTELS, RESORTS AND CERTAIN OTHER LICENSED PREMISES AWARD – STATE
(EXCLUDING SOUTH-EAST QUEENSLAND) 2003**

DEPUTY PRESIDENT SWAN

27 November 2003

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 20 and 27 November 2003, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.9 (Termination of Employment), 4.10 (Introduction of Changes) and 4.11 (Redundancy) and inserting the following in lieu thereof:

“4.9 Termination of employment

4.9.1 Statement of employment

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.9.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years.....	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least two years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
- Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.9.3 Notice of termination by employee

The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.9.2(d).

Where the employer and employee mutually agree a lesser period of notice as agreed may apply than that detailed in clause 4.9.3.

4.9.4 Time off during notice period

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.10 Introduction of changes

4.10.1 Employer's duty to notify

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.10.2 Employer's duty to consult over change

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.10.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.11 Redundancy

4.11.1 Consultation before terminations

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.

- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.11.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse affects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.11.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.11.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.9.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.11.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmitter) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmitter of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.11.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.11.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.11.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.11.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.11.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.11.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.9.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.11.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.11.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.11.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.11.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.11.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.11.10 *Employees with less than one year's service*

Clause 4.11 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.11.11 *Employees exempted*

Clause 4.11 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.11.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.11 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.11.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.11.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmitter) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
 - (B) which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.11.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.11.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

Dated 27 November 2003.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 26 May 2004

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 125 – application for amendment***The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B1589 of 2003)****ICE CREAM AND FROZEN CONFECTIONERY MANUFACTURING AWARD – STATE 2003**

DEPUTY PRESIDENT SWAN

27 November 2003

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 20 and 27 November 2003, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.8 (Termination of Employment), 4.9 (Introduction of Changes) and 4.10 (Redundancy) and inserting the following in lieu thereof:

“4.8 Termination of employment*4.8.1 Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.8.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years.....	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least two years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
- Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- the ordinary working hours to be worked by the employee; and
 - the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.
- (f) In order to terminate the employment of an employee in their first 3 months of employment (their probationary period) the employer is required to give the employee 2 days' notice, or payment in lieu thereof.

4.8.3 Notice of termination by employee

The notice of termination required to be given by a full-time or part-time employee shall be two days. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.8.2(d) for a period of notice of two days.

4.8.4 Time off during notice period

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.9 Introduction of changes*4.9.1 Employer's duty to notify*

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.9.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.9.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.10 **Redundancy**

4.10.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.10.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse affects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.10.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.10.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.8.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.10.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmitter) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmitter of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.10.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.10.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.10.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.10.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.10.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.10.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.8.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.10.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.10.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.10.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.10.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.10.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.10.10 *Employees with less than one year's service*

Clause 4.10 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.10.11 *Employees exempted*

Clause 4.10 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.10.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.10 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
- (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.10.13 Exemption where transmission of business

- (a) The provisions of clause 4.10.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.10.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.10.14 Incapacity to pay

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer’s incapacity to pay.”.

Dated 27 November 2003.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 26 May 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers’ Union of Employees, Queensland AND Kingfisher Bay Resort and Village
(No. B1589 of 2003)**

KINGFISHER BAY RESORT AND VILLAGE AWARD 2003

DEPUTY PRESIDENT SWAN

27 November 2003

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 20 and 27 November 2003, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.5 (Termination of Employment), 4.6 (Introduction of Changes) and 4.7 (Redundancy) and inserting the following in lieu thereof:

“4.5 Termination of employment

4.5.1 Statement of employment

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.5.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years.....	3 weeks
More than 5 years	4 weeks
- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least two years’ continuous service with the employer shall be entitled to an additional week’s notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee’s employment had continued until the end of the required notice period. The total must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee’s employment contract.

- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.5.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.5.2.

4.5.4 *Time off during notice period*

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.6 **Introduction of changes**

4.6.1 *Employer's duty to notify*

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.6.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.6.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.7 **Redundancy**

4.7.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.7.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.7.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.7.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.5.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.7.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmitter) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmitter of the business, becomes an employee of the transmittee:

- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
- (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

- (b) In clause 4.7.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.7.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.7.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.7.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.7.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.7.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.5.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.7.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.7.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.7.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.7.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.7.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.7.10 *Employees with less than one year's service*

Clause 4.7 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.7.11 *Employees exempted*

Clause 4.7 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.7.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.7 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.7.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.7.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.7.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.7.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

Dated 27 November 2003.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 26 May 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B1589 of 2003)

LAUNDRY WORKERS AWARD – STATE (EXCLUDING BRISBANE) – 2003

DEPUTY PRESIDENT SWAN

27 November 2003

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 20 and 27 November 2003, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.7 (Termination of Employment), 4.8 (Introduction of Changes) and 4.9 (Redundancy) and inserting the following in lieu thereof:

“4.7 Termination of employment

4.7.1 *Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.7.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years.....	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least two years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
- Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- the ordinary working hours to be worked by the employee; and
 - the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.7.3 Notice of termination by employee

The notice of termination required to be given by an employee shall be one week. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.7.2(d) for a period of notice of one week.

4.7.4 Time off during notice period

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.8 Introduction of changes

4.8.1 Employer's duty to notify

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.8.2 Employer's duty to consult over change

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.8.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.9 Redundancy

4.9.1 Consultation before terminations

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.9.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse affects on the employees concerned.

- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.9.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.9.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.7.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.9.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmitter) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmitter of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.9.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.9.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.9.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.9.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.9.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.9.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.7.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.9.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.9.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.9.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.9.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.9.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.9.10 *Employees with less than one year's service*

Clause 4.9 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.9.11 *Employees exempted*

Clause 4.9 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.9.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.9 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.9.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.9.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmitter) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
 - (B) which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.9.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.9.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

Dated 27 November 2003.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 26 May 2004

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

OIL STORES EMPLOYEES' AWARD – SOUTHERN DIVISION (EASTERN DISTRICT) 2003

(Gazette 7 November 2003)

(AR16 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

3 June 2004

AWARD REVIEW
(Correction of Error)

WHEREAS errors occurred in the Award as published in the *Queensland Government Industrial Gazette* of 7 November 2003, Vol. 174, No.10, pages 861-877, the following corrections are made to be effective as from 6 October 2003.

1. By deleting clause 5.2.1 and inserting the following in lieu thereof:

“5.2.1 *Adults*

The minimum rates of wages payable to the following classes of employees shall be:

	Per week
	\$
Storeworkers and packers.....	510.30

Note 2: 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 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.”.

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

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
	\$	\$
5.3.1(a)	4.60	4.70
5.3.1(b)	11.30	11.70
5.3.1(c)	11.30	11.70
5.3.2	1.25	1.29
5.3.3	63.65c	65.7c
5.3.3(e)	25.1c	25.9c
5.3.3(e)	50.2c	51.8c
5.3.5	6.10	6.30

Dated 3 June 2004.

G.D. SAVILL,
Acting Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

TEACHERS' AWARD – NON-GOVERNMENTAL SCHOOLS 2003

(Gazette 20 February 2004)

(AR58 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

8 June 2004

AWARD REVIEW
(Correction of Error)

WHEREAS an error occurred in the Award as published in the *Queensland Government Industrial Gazette* of 20 February 2004 Vol. 175, No.7, pages 749-777, the following corrections are made to be effective as from 1 December 2003.

By deleting the amount of "\$13.0705" from clause 6.2 and inserting the amount of "\$13.489" in lieu thereof.

Dated 8 June 2004.

G.D. SAVILL,
Acting Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1990 s. 142
Industrial Relations Act 1999 s. 713(2)

MORETON BAY COLLEGE

AND

QUEENSLAND INDEPENDENT EDUCATION UNION OF EMPLOYEES

**TEACHERS' AWARD – NON-GOVERNMENTAL SCHOOLS PROMOTIONAL
POSITIONS – MORETON BAY COLLEGE INDUSTRIAL AGREEMENT**

NOTICE OF INTENTION TO RETIRE FROM INDUSTRIAL AGREEMENT

TO: The Industrial Registrar, Industrial Registry, Level 14, Central Plaza 2, 66 Eagle Street (Corner Creek and Elizabeth Streets), Brisbane 4000,
GPO Box 373, Brisbane Q 4001.
Phone: (07) 3227 8060, Fax: (07) 3221 6074

TAKE NOTICE that Moreton Bay College of 450 Wondall Road, Wynnum West Qld 4178 one of the parties to the industrial agreement made between Moreton Bay College and the Queensland Independent Education Union of Employees and dated 20 October 1994 filed at the registry and given the registered No. IA34 of 1994 and that expired on 30 January 1995 will retire from the agreement and cease to be a party to the agreement at the expiration of 31 days from the date this notice is filed.

FURTHER TAKE NOTE, that a copy of this notice has also been served on each of the original and any later parties to the agreement.

Signed for:
Moreton Bay College

PAUL TEYS
Principal

In the presence of – ANGELA BRAND

Filed in the Industrial Registry on: 28 April 2004

G.D. SAVILL,
Acting Industrial Registrar.