

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287 – general rulings

Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers & Others (No. B1385 of 2004)

and

The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers & Others (No..B1433 of 2004)

APPLICATION FOR GENERAL RULING IN REGARD TO THE SUPERANNUATION CONTRIBUTION AMOUNT FOR AWARD EMPLOYEES

VICE PRESIDENT LINNANE
DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD

17 December 2004

DECISION

- [1] On 9 September 2004 the Queensland Council of Unions (QCU) filed an application for a General Ruling (B1385 of 2004) in relation to the Superannuation Contribution amount for award employees. On 21 September 2004 The Australian Workers' Union of Employees, Queensland filed a similar application (B1433 of 2004). Both applications were subsequently amended with the relief being sought in both applications being as follows:
- “(a) That the minimum contribution amount for superannuation as prescribed in Awards which make provision for the payment of an amount of ‘3%’ be varied by the deletion in the Award of such an amount of ‘3%’ and by the insertion in lieu into the award the provision ‘9% (except in relation to contributions made by an employer when an employee is absent on workers’ compensation where the contribution level will be 3%)’.
- (b) That the minimum level of earnings that an eligible employee earns to require a contribution to superannuation by an employer is an amount of \$450 per month.”.
- [2] The applications were ultimately made by consent and at the hearing of the matter on 10 December 2004 we granted the applications and an operative date of 1 January 2005. We indicated at that time that we would deliver brief reasons for our decision. These are those reasons.

Superannuation Contribution

- [3] On 29 September 1989 the Queensland Industrial Relations Commission issued a Statement of Policy draft clause for inclusion into awards of the Commission in relation to Occupational Superannuation: see *Trades and Labour Council of Queensland AND The Crown and Others, The Australian Workers' Union of Employees, Queensland AND The Crown and Others* (1989) 132 QGIG 1105. That Statement of Policy provided for a 3% contribution of ordinary time earnings by an employer on behalf of an eligible employee into an approved fund. The contribution level specified in the majority of awards of this Commission is currently 3%.
- [4] The *Superannuation Guarantee (Administration) Act 1992* (Commonwealth legislation) commenced on 1 July 1992. One of the functions of this Commonwealth legislation is the governance of the contribution level for superannuation by employers for the overwhelming majority of employees in Australia. The contribution level required under that legislation was set at 9% as and from 1 July 2002.
- [5] Section 126(d) of the *Industrial Relations Act 1999* (Act) provides that the Commission “must ensure an award provides for secure, relevant and consistent wages and employment conditions.”. Further s. 126(f) of the Act provides that the Commission “must ensure an award provides fair standards for employees in the context of living standards generally prevailing in the community.”.
- [6] As Queensland employers are required, by the Commonwealth legislation, to contribute 9% of ordinary time earnings for employees’ superannuation, the 3% level prescribed in the majority of awards of this Commission seems inconsistent with the abovementioned provisions of the Act. It is appropriate that awards of this Commission contain a superannuation contribution amount which reflects the actual amount payable under the Commonwealth legislation i.e. 9%.
- [7] A particularly relevant issue is that under the current award provisions employees can only recover 3% superannuation contributions under s. 278(1)(d) and s. 408 of the Act if superannuation contributions remain unpaid by the employer. The remaining amount must be reclaimed via the Australian Tax Office. By increasing

the level of contributions to 9%, employees will be able to recover any unpaid amounts via the procedures provided for in the Act.

- [8] The Superannuation contribution for workers absent on workers' compensation will remain at the 3% level although both the QCU and AWU have foreshadowed a further application in 2005 in respect of this matter.

Minimum level of earnings

- [9] Clause 2(c) of the Superannuation Statement of Policy issued on 29 September 1989 provides as follows:

“Minimum Level of Earnings – No Employer shall be required to pay superannuation contributions on behalf of any eligible employee whether full-time, part-time, casual, adult or junior in respect of any week during which the employee's ordinary time earnings, as defined, do not exceed 35% of the Guaranteed Minimum Wage for the Southern Division, Eastern District as declared from time to time.”

- [10] The current minimum level of earnings as per the Declaration of Policy regarding Occupational Superannuation, issued on 8 August 2000 is 35% of \$309.00. This amount equates to \$432.60 per month. There has been no application to increase this threshold since 2000.
- [11] The Commonwealth legislation provides a minimum earnings amount of \$450.00 per month be paid to attract the superannuation contribution from the employer. If the award clauses are to reflect the actual obligations on employers and therefore be relevant as required by the Act then the minimum level of earnings required to attract the superannuation contribution should be \$450.00 per month.
- [12] In all the circumstances we are of the view that the applications should be granted. The parties seek an operative date of 1 January 2005. We see that as an appropriate operative date.

Order accordingly.

D.M. LINNANE, Vice President.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

Hearing Details:
2004 10 December

Appearances:

Mr M. Brady for the Queensland Council of Unions.
Mr D. Broanda for The Australian Workers' Union of Employees, Queensland.
Mr S. Ross for the Queensland Nurses' Union of Employees

Mr A. Dungan for the State of Queensland and with him Ms E. Caird.

Mr S. Nance for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.

Mr R. Beer for the Local Government Association of Queensland (Inc).

Ms K. O'Brien for The Registered and Licensed Clubs Association of Queensland, Union of Employers.

Ms J. Oliver for the Hardware Association of Queensland, Union of Employers.

Ms B. Seeto for the National Retail Association Limited, Union of Employers.

Mr J. Price for the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).

Released: 17 December 2004