

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B615 of 2000); AND The Australian Workers'
Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B620 of 2000)**

PRESIDENT HALL
VICE PRESIDENT LINNANE
COMMISSIONER EDWARDS

8 August 2000

DECLARATION OF POLICY

1. Role of Principles

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

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

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

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

3. State Wage Case Adjustment

In accordance with the State Wage Case – August 2000 awards are to be amended by way of a Declaration of General Ruling in the following form:–

- a \$15 per week increase in award rates;

subject to the following:–

- (a) The operative date will be 1 September 2000.
- (b) There will be absorption of the State Wage Case adjustment to the extent of:–
 - (i) any above award payments; and
 - (ii) award wage increases since 1 February 1992 other than safety net, State Wage Case, work value or minimum rates adjustment.
- (c) Aboveaward payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to certified agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.
- (d) The following clause is to be inserted into all awards that have been amended to give effect to the Declaration of General Ruling:–

“The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2000 Declaration of General Ruling and earlier Safety Net Adjustments. [Disputed cases are to be referred to the President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award

which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

The above clause will replace the offsetting clause inserted into awards pursuant to the Principles determined in the State Wage Case of 1999 (162 QGIG 359).

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

4. Previous State Wage Case Increases

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

5. Statements of Policy and Like Decisions

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

6. Adjustment of Allowances and Service Increments

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

7. Work Value Changes

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

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

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

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

8. Standard Hours

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

9. Queensland Minimum Wage

In accordance with the State Wage Case decision operative from 1 September 2000, awards may be amended to include the clauses set forth at (c) and (e):-

- (a) The operative date will be no earlier than the date of the amendment to the Award.
- (b) The Queensland Minimum Wage is to be provided for in a separate clause as contained in subclause (c) of the Principle. Where classification rates are below the Queensland Minimum Wage there should be an indication that the Queensland Minimum Wage applies to those classifications.
- (c) The separate clause referred to in (b) is as follows:-

“Queensland Minimum Wage

(1) The Queensland Minimum Wage

No employee shall be paid less than the Queensland Minimum Wage.

(2) Amount of Queensland Adult Minimum Wage

(a) The Queensland Minimum Wage for full-time adult employees not covered by subclause (4), is \$400.40 per week.

(b) Adults employed under the Supported Wage Award – State shall continue to be entitled to receive the wage rates determined under that Award:

Provided that such employees shall not be paid less than the amount determined by applying the percentage in the Supported Wage Award – State applicable to the employee concerned to the amount of the minimum wage specified in subclause (2)(a).

- (c) *Adults employed as part-time or casual employees shall continue to receive the wage rates determined under the casual and part-time clauses of the Award:*

Provided such employees shall not be paid less than pro rata the minimum wage specified in subclause 2(a) according to the number of hours worked.

(3) How the Queensland Minimum Wage applies to Juniors

The wage rates provided for juniors by this Award continue to apply unless the amount determined under subclause 3(a) is greater.

- (a) *The Queensland Minimum Wage for an employee to whom a junior wage rates clause applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (2).*

(4) Application of Queensland Minimum Wage to Special Categories of Employees

- (a) *This clause has no application to a trainee or apprentice who is party to a training agreement registered under the Training and Employment Act 2000.*

- (b) *[Leave reserved for other special categories].*

(5) Application for Queensland Minimum Wage to Award Rates Calculation

The Queensland Minimum Wage:-

- (a) *applies to all work in ordinary hours;*
- (b) *applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this Award; and*
- (c) *is inclusive of the arbitrated State Wage Case Adjustment provided by the Declaration of General Ruling operative from 1 September 2000 and all previous Safety Net and State Wage Adjustments.*

Operative Date: *The date a Queensland Minimum Wage clause is inserted into the Award.”.*

Note: Where the Award does not provide for one of the categories of employment in this subclause, the provisions relating to the category will need to be deleted.

- (d) At the time when the Award is to be varied to insert the Queensland Minimum Wage clause, each party to the Award will be required to give a specific commitment as to absorption of any increase arising from the insertion of the Queensland Minimum Wage clause to the extent of any equivalent amount in rates of pay which are above the wage rates prescribed in the Award. Such aboveaward payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to certified agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

- (e) The following clause must be inserted into the Award:-

“The rates of pay in this Award include the Queensland Minimum Wage payable under the Declaration of General Ruling operative from 1 September 2000. Any increase arising from the insertion of the Queensland Minimum Wage clause 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 this Award. Such aboveaward 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.”.

Note: In determining whether an increase is payable because of the introduction of the Queensland Minimum Wage, the arbitrated State Wage Case adjustment in this decision and all previous Safety Net and State Wage Adjustments are first to be taken into account.

10. Award Amendment to Give Effect to a Certified Agreement

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

11. First Award and Extension to an Existing Award

(1) Any first award or an extension to an existing award must be consistent with the Commission's obligations under Chapter 5 of the Act.

In determining the content of a first award the Commission will have particular regard to:-

- (a) the existing wage rates and conditions of employment applicable to the employees to be covered by the proposed award;
 - (b) relevant Statements of Policy and like decisions;
 - (c) relevant wage rates in other awards; and
 - (d) the maintenance or establishment of appropriate relativities within and between awards and the need for skill based career paths.
- (2) In the extension of an existing award to new work or to award free work the rates applicable to such work will be assessed by reference to the value of the work already covered by the Award.
- (3) The proposed award or extension to award is not a device to circumvent the requirements which the parties would have to comply with in the event they had sought to have an existing certified agreement amended, or a new agreement certified or an award amended to give effect to a certified agreement.
- (4) The matter may be referred to a Full Bench with the approval of the President.

12. Equal Remuneration

Leave reserved.

13. Economic Incapacity

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

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

14. Reference to Full Bench

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

15. Duration

This Statement of Principles will operate until reviewed.

Dated this eighth day of August, 2000.

D.R. HALL, President.

D.M. LINNANE, Vice President.

K.L. EDWARDS, Commissioner.

Appearances:-

Ms K. Ruttiman and later Ms D. Ralston for the Queensland Council of Unions.

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

Mr E. Porter for the State of Queensland.

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

Mr R. McPherson for Australian Industry Group, Industrial Organisation of Employers (Queensland).

Mr S.R. Richards and later Mr C. Lentini for the Queensland Hotels Association, Union of Employers.

Mr G. Trost for the Queensland Cane Growers' Association Union of Employers.

Mr M. Smith for Retailers' Association of Queensland Limited, Union of Employers.

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

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

Mr K. Law for The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers.

Mr P. Warren for the Australian Sugar Milling Association, Queensland, Union of Employers.

Mr D. Matley for the Hardware Association of Queensland, Union of Employers.

Mr P. Whitton for the Queensland Master Builders Association, Industrial Organisation of Employers.

Mr J. Patti (of Employer Services Pty Ltd) on behalf of Private Hospitals Association of Queensland.

Mr M. Cuthbertson for Australian Mines and Metals Association (Inc.) Queensland Branch.

Mr W. Turner for Agforce Queensland Industrial Union of Employers.

Mr L. Gillespie for Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

Released: 8 August 2000