

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)**

**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

Application for Declaration of General Ruling – Submission for flow-on of wage increases decided upon by AIRC – State of economy – Application granted.

DECISION

On 1 May 2000 a Full Bench of the Australian Industrial Relations Commission published its decision in which is colloquially known as the Safety Net Review – Wages – May 2000, see 95 IR 63.

Materially, provision was made for all federal award rates to be increased by \$15 per week on award by award application. The decision provided for the absorption of part or all of the increase into any above-award payment received by a particular employee or group of employees. The Federal Minimum Wage was increased from \$385.40 to \$400.00. On 3 May 2000 the Queensland Council of Unions filed with the Industrial Registrar an application which, amongst other things, sought to flow the decision of the Australian Industrial Relations Commission into Queensland awards. On the subsequent day The Australian Workers' Union of Employees, Queensland filed an application which, after an amendment made on 15 June 2000 was in similar terms. There is no opposition to joinder of the two applications. We join the applications.

The applications were opposed by The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers and the Queensland Hotels Association, Union of Employers. (QHA also mounted an alternative submission of phasing in by 3 instalments.) Each of the organisations relied upon circumstances peculiar to its area of coverage. Neither organisation called a witness. Each case was based upon statements seriously made (but not tested) from the Bar Table and documents and extracts from documents (or based upon documents) which were not properly proved. We would not be prepared to grant an exclusion under s. 287(4) on the basis of such material. It would be remiss of us to deny the benefit of the Australian decision to all low paid workers in Queensland and all workers in Queensland who have not been able to bargain for an increase, on the basis of unproven assertions about limited classes of employers who choose not to pursue an application under s. 287(4).

The Queensland Cane Growers' Association Union of Employers and the Queensland Mechanical Cane Harvesters Association, Union of Employers do seek the exclusion of the classes of employers which they represent or, in the alternative, some of them from any Declaration of General Ruling which might be made. We are informed that the case advanced by the two employer organisations and the case made in opposition may be heard in a day. It is appropriate that the hearing be in a cane growing locality. The issues will be heard in Mackay on 14 August 2000. The expectation is that it will be possible to resolve the matter prior to the date of operation of any Declaration of General Ruling which might be made.

It is the submission of the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers that the wage increase should be \$8 per week, not \$15 per week and the allowances should be increased by 1.7% not 3.1%. The submission is based on the circumstance that the Queensland economy is not performing as well as the Australian economy overall. No materials were put in support of the submission. We have considered detailed materials relied upon by the Queensland Government, which supports the applications. The material suggests that the Queensland economy can support the increase. (We note that in the proceedings before the Australian Commission the Queensland Government, amongst others, supported a \$20 per week increase.) It cannot reasonably be expected that all state economies will at all times perform in the same way. The Australian Industrial Relations Commission takes account of circumstances in all states and is aware of a likelihood that its decision will flow into particular state industrial systems. It is obviously aware also that its awards may marginally impact differently in different states. There will be times when the Queensland economy outperforms other states and *vice versa*. As long as the discrepancies are not large and consistent, we consider that the proper course is to take the broad view and flow the Federal increases into the Queensland system. We note that the Australian decision has been followed in New South Wales (30 May 2000), South Australia (31 May 2000), and Western Australia (9 June 2000). A significant clutch of employer organisations support the application, *viz* Australian Industry Group, Industrial Organisation of Employers (Queensland), the Local Government Association of Queensland (Incorporated), the Hardware Association of Queensland, Union of Employers, the Queensland Master Builders Association, Industrial Organisation of Employers,

and the Australian Sugar Milling Association, Queensland, Union of Employers (with respect to the Milling sector). We propose to make the Declaration of General Ruling which has been sought.

There has been some argument about clause 10 of the existing Principles which guide the commission constituted by a commissioner sitting alone. It is contended by the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers that the use of the adjective "future" in the second last sentence could require a commissioner sitting alone to permit double dipping, where the \$15 increase to which this decision relates flows into the award before the s. 129 order is made. The solution proposed is to amend the clause which clause 9 (5)(e) requires to be inserted in awards of the commission to give effect to this decision. The applicants oppose the proposed amendment on the ground that it may produce unforeseen consequences. We accept that argument. However, lest clause 10 impose an unintended limitation on a single commissioner we propose to place an asterisk after the adjective "future" and insert in square brackets at the end of the clause [The Commission is not restricted to hearing submissions about future state wage increases]. Read with these reasons, which on the more recent authorities are amongst the extrinsic materials to which reference may be made in construing the guidelines, that addition should prove an adequate safeguard.

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