

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 288 – statement of policy

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)

VICE PRESIDENT LINNANE
DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD

21 March 2005

This amendment to the Statement of Policy gazetted on 15 September 1995 (150 QGIG 284-290) gives effect to the decision of this Commission gazetted on 7 January 2005 (178 QGIG 28-29) and operates from 1 January 2005.

STATEMENT OF POLICY

Occupational Superannuation

(1) *Application*

In addition to the rates of pay prescribed by the Award, eligible employees, as defined, shall be entitled to occupational superannuation benefits, subject to the provisions of this clause.

*** NOTE: The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. This legislation, as amended from time to time, substantially governs the superannuation rights and obligations of the parties. PARTIES SHOULD SEEK THEIR OWN ADVICE AS TO THE MATTERS COVERED BY THAT LEGISLATION.**

(2) *Contributions*

(a) Amount – As from 1 January 2005 every employer shall contribute on behalf of each eligible employee as from 1 January 2005 an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund as defined in this clause. Each such payment of contributions shall be rounded off to the nearest ten (10) cents:

Provided that where an employee is absent and is receiving by way of workers' compensation an amount of money no less than the award rate of pay the contribution shall be calculated at 3%.

(b) Regular Payment – The employer shall pay such contributions to the credit of each such employee at least once each calendar month or in accordance with the requirements of the Approved Fund Trust Deed.

(c) Minimum Level of Earnings – No employer shall be required to pay superannuation contributions on behalf of any eligible employee in respect of any month during which the employee's ordinary time earnings, as defined, is less than \$450.00.

(d) Absences from work – Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on workers' compensation.

(e) Other Contributions – Nothing in this clause shall preclude an employee from making contributions to a fund in accordance with the provisions thereof.

(f) Cessation of Contributions – An employer shall not be required to make any further contributions on behalf of an eligible employee for any period after the end of the ordinary working day upon which the contract of employment ceases to exist.

- (g) No Other Deductions – No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the fund other than the remission of contributions as prescribed herein.

(3) Definitions

- (a) “Approved Fund” means a fund approved for the purposes of the Award by the Queensland Industrial Relations Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by the Award. Such approved fund may be individually named or may be identified by naming a particular class or category.
- (b) “Eligible employee” shall mean any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause (2) effective from the commencement of that qualifying period.
- (c) “Fund” means a superannuation fund as defined in the *Superannuation Industry (Supervision) Act 1993*, and satisfying the superannuation fund conditions in relation to a year of income, as specified in that Act and complying with the operating standards as prescribed by Regulations made under that Act. In the case of a newly established fund the term shall include a superannuation fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.
- (d) “Ordinary time earnings” shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading and leading hand, in-charge or supervisory allowances where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fares and travelling time allowances or any other extraneous payments of a like nature.

(4) Approved Fund

For the purposes of the Award an approved fund shall be:

- (a) A union nominated fund, preferably an industry or multi-industry fund with joint union/employer management.
- (b) An employer nominated fund, preferably an industry or multi-industry fund with joint union/employer management.
- (c) Any named fund as is agreed to between the relevant employer/industrial organisation parties to the Award (Industrial Agreement) and as recorded in an approved industrial instrument.
- (d) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award of, or an agreement approved by, an industrial tribunal, whether State or Federal jurisdiction, and already has practical application to the majority of award employees of that employer.
- (e) As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to s. 111 of the *Industrial Relations Act 1999* and are employed by an employer who also belongs to that fellowship, any fund nominated by the employer and approved by the Brethren.
- (f) Any fund agreed between an employer and an employee who holds a Certificate issued pursuant to s. 111 of the *Industrial Relations Act 1999* where membership of a fund cited in an award would be in conflict with the conscientious beliefs of that employee in terms of section 111.
- (g) In relation to any particular employer, any other established fund to which that employer was already actually making regular and genuine contributions in accordance with clause (2) on behalf of at least a significant number of that employer’s employees covered by the Award/Industrial Agreement and continues to make such contributions:

(5) Challenge of a Fund

- (a) An eligible employee being a member or a potential member of a fund, as well as an industrial organisation whose registered list of callings incorporates any of the classification/s of employees to whom the Award

applies, may by notification of a dispute challenge a fund on the grounds that it does not meet the requirements of this clause.

- (b) Notwithstanding that the Commission determines that a particular fund does not meet the requirements of this clause, the Commission may in its discretion and subject to any recommendation, direction or order it may make, recognise any or all of the contributions previously made to that fund as having met the requirements or part thereof of clause (2) up to and including the date of that determination.
- (c) In the event of any dispute over whether any fund complies with the requirements of this clause, the onus of proof shall rest upon the employer.

(6) Fund Selection

- (a) No employer shall be required to make or be prevented from making, at any one time, contributions into more than one approved fund. Such fund, other than a fund referred to in clauses (4)(d), (e), (f) and (g) of clause (4), shall be determined by a majority decision of employees.
- (b) Employees to whom these provisions apply, who as at the date of this amendment are members of an established fund covered by clause (4)(g), shall have the right by majority decision to choose to have the contributions specified in clause (2) paid into a fund as provided for elsewhere in clause (4) in lieu of the established fund to which clause (4)(g) has application.
- (c) The initial selection of a fund recognised in clause (4) shall not preclude a subsequent decision by the majority of employees in favour of another fund recognised under that clause where the long term performance of the fund is clearly disappointing.

Where this provision has been utilised and as a result another approved fund is determined, access to a further re-appraisal of the fund for the purpose of favouring yet another fund shall not be available until a period of three years has elapsed after that utilisation of this provision:

Provided that the provisions of this clause do not preclude the making at any time of an industrial instrument within the terms of clause (4)(c).

(7) Enrolment

- (a) Each employer to whom this clause applies shall as soon as practicable as to both current and future eligible employees:
 - (i) notify all employees of their entitlement to occupational superannuation;
 - (ii) consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause (4);
 - (iii) take all reasonable steps to ensure that upon the determination of an appropriate fund each eligible employee receives, completes, signs and returns the necessary application forms provided by the employer to enable that employee to become a member of the fund; and
 - (iv) submit all completed application forms and any other relevant material to the Trustees of the fund.
- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with this clause shall:
 - (i) complete and sign the necessary application forms to enable that employee to become a member of that fund; and
 - (ii) return such forms to the employer within 28 days of receipt in order to be entitled to the benefit of the contributions prescribed in clause (2).
- (c) Where an employer has complied with the requirements of clause (7)(a) and an eligible employee fails to complete, sign and return the application form within 28 days of the receipt by the employer of that form, then that employer shall:

- (i) advise an eligible employee in writing of the non-receipt of the application form and further advise the eligible employee that continuing failure to complete, sign and return such form within 14 days could jeopardise his entitlement to the occupational superannuation benefit prescribed by this clause.
 - (ii) in the event that an eligible employee fails to complete, sign and return such application form within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which the completed and signed application form is received by the employer.
 - (iii) in the event that an eligible employee fails to return a completed and signed application form within a period of six months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form is a pre-requisite to the payment of any occupational superannuation contributions.
 - (iv) at the same time as advising the eligible employee pursuant to clause (7)(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the Secretary of an industrial organisation of employees whose registered callings incorporate the classification of the eligible employee a copy of each letter forwarded by him to the eligible employee pursuant to clauses (7)(c)(i) and (iii).
- (d) Where an employer fails to provide an eligible employee with an application form in accordance with provision (a)(iii) the employer shall be obliged to make contributions as from the date of operation of this clause or from the date an employee became an "eligible employee" if that occurs thereafter:

Provided that an eligible employee completes, signs and returns to the employer an application form within 28 days of being provided with the application form by the employer. Where an eligible employee fails to complete, sign and return an application form within such period of 28 days clause (7)(c) shall apply.

- (e) Unpaid Contributions – Subject to s. 406 of the *Industrial Relations Act 1999*, and to clause (5), where the discretion of the Commission has been exercised, should it be established that the employer has failed to comply with the requirements of clause (2) in respect of any eligible employee such employer shall be liable to make the appropriate contributions retrospectively to the date of eligibility of the employee, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant approved fund, or as necessary a fund to be determined by the Commission under clause (4), had they been paid on the due dates:

Provided that where an employer has paid the "Superannuation Guarantee Charge" under the *Superannuation Guarantee Act 1992* and *Superannuation Guarantee Charge Amendment 2002 Act* on behalf of an eligible employee the amount paid shall be credited towards satisfying the requirements of this clause.

The making of such contributions satisfies the requirements of this clause excepting that resort to this provision shall not limit any common law action which may be available in relation to death, disablement or any similar cover existing within the terms of a relevant fund.

(8) *Record Keeping*

The employer shall be required to maintain records of time worked for the purposes of establishing the employee's entitlement to occupational superannuation, and of payments made to the approved fund in similar form to time and wages records required to be kept in accordance with s. 366 of the *Industrial Relations Act 1999*, and shall have such records available for inspection by an industrial inspector or officer of an industrial organisation, authorised pursuant to s. 364 of that Act.

(9) *Exemptions*

An employer may apply to the Commission for exemption from all or any of the provisions of this clause in the following circumstances:

- (a) incapacity to pay the costs associated with its implementation; or
- (b) any special or compelling circumstances peculiar to the business of the employer.

Dated 21 March 2005.

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

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: 22 March 2005