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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 288 - application for statement of policy

**Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial
Organisation of Employers and Others (No. B209 of 2002)**

AND

**The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and
Industry Limited, Industrial Organisation of Employers and Others (No. B308 of 2002)**

VICE PRESIDENT LINNANE
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER BLADES

29 October 2003

**TERMINATION, CHANGE AND REDUNDANCY CLAUSE
STATEMENT OF POLICY**

- [1] This Statement of Policy gives effect to the decisions of this Commission gazetted on 18 August 2003 (173 QGIG 1417) and 15 October 2003 (174 QGIG 741)
- [2] This Statement of Policy provides guidance to the Commission constituted by a single Commissioner sitting alone about how to deal with applications to insert the termination of employment, introduction of changes and redundancy clauses into awards.
- [3] However constituted, the Commission will have regard to s. 3 of the *Industrial Relations Act 1999* (Act) and must have regard to s. 126 of the Act.
- [4] On application, an award may be amended to include termination of employment, introduction of changes and redundancy clauses in accordance with this Statement of Policy and found at Schedule 1.
- [5] Applications which seek termination of employment, introduction of changes and redundancy clauses which differ from that shown in Schedule 1 will be determined on a case by case basis.
- [6] The Commission will determine such applications in accordance with relevant provisions of the Act.
- [7] This Statement of Policy operates from 1 December 2003.

SCHEDULE ONE

A. TERMINATION OF EMPLOYMENT

Statement of Employment

1. 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.

Termination by Employer

2. (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.

Notice of Termination by Employee

3. 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 (d) of the "Termination by Employer" clause.

[NB: Where a particular award prescribes a different amount of notice for an employee such lesser or greater amount of notice will prevail. This is to accommodate those awards where alternative arrangements prevail.].

Time Off During Notice Period

4. 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.

B. INTRODUCTION OF CHANGES

Employer's Duty to Notify

5. (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.

Employer's Duty to Consult over Change

6. (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 the "Employer's Duty to Notify" clause.
- (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.

C. REDUNDANCY

Consultation Before Terminations

7. (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 (a) of the "Consultation before Termination" clause 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.

Transfer to Lower Paid Duties

8. (a) Where an employee is transferred to lower paid duties for reasons set out in the "Consultation Before Terminations" clause 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 Section A-TERMINATION OF EMPLOYMENT.
- (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.

Transmission of Business

9. (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 the "Transmission of Business" clause, "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.

Time Off During Notice Period

10. Where a decision has been made to terminate an employee in the circumstances outlined in (a) of the "Consultation Before Terminations" clause, 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.

Notice to Centrelink

11. Where a decision has been made to terminate employees in the circumstances outlined in the "Consultation Before Terminations" clause, 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.

Severance Pay

12. (a) In addition to the period of notice prescribed for ordinary termination in (a) of the "Termination by Employer" clause, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in (a) of the "Consultation Before Terminations" clause, 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.

(*In the instance where commission payments, in whole or in part, are a feature of the Award, then reference to s. 7 of the *Industrial Relations Regulations 2000* offers assistance in the method of calculation to be adopted.)

Superannuation Benefits

13. 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.

Employee Leaving During Notice

14. An employee whose employment is terminated for reasons set out in (a) of the "Consultation Before Terminations" clause, 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.

Alternative Employment

15. 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.

Employees with Less Than One Year's Service

16. Section C - **REDUNDANCY** 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.

Employees Exempted

17. Section C - **REDUNDANCY** 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*.

(*A reference to seasonal employees, or employees engaged by the hour or day, may be included where such employees are a feature of the Award.)

Employers Exempted

18. (a) Subject to an order of the Commission, in a particular redundancy case, Section C - **REDUNDANCY** 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.

Exemption Where Transmission of Business

19. (a) The provisions of the "Severance Pay" clause 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 (a)(ii) of the "Exemption Where Transmission of Business" clause if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

Incapacity to Pay

20. 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 29 October 2003.

D.M. LINNANE, Vice President.

A.L. BLOOMFIELD, Deputy President.

B.J. BLADES, Commissioner.

Hearing Details:

2002 28 February
 25 March
 21 and 31 May
 18 and 29 July
 8, 19-22, 26-28 August
 16 & 17 September
 24 October

Appearances:

Ms D. Ralston and Mr M. Brady for the Queensland Council of Unions.

Mr B. Swan for The Australian Workers' Union of Employees, Queensland.

Mr T. Shipstone and Mr E. Porter for the State of Queensland.

Mr J. Stewart, Mr P. Drever and Mr B. Cosgrove of the Australian Government Solicitor on behalf of the Minister for Employment and Workplace Relations.

Ms S. Lindsay, Mr M. Smith and Mr J. Dwyer for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.

Mr R. McPherson, Ms S. Davis and Mr M. Belfield for the Australian Industry Group, Industrial Organisation of Employers (Queensland).

Mr M. Guymer and Ms. S McAuliffe for the Retailers' Association of Queensland Limited, Union of Employers.

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

Mr R. Wotherspoon for the National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers.

Mr C. Lentini for the Queensland Hotels Association, Union of Employers.

Ms V. Lincoln for the Queensland Country Press Association - Union of Employers.

Mr D. Pratt for The Queensland Road Transport Association Industrial Organisation of Employers.

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

Ms K. DeLange for The Registered and Licensed Clubs Association of Queensland, Union of Employers.

Ms T. Scrine for the Furnishing Industry Association of Australia (Queensland) Limited Union of Employers.

Mr G. Roberts and Mr S. Wiseman for The Baking Industry Association of Queensland - Union of Employers.

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

Mr G. B. Siebenhausen for the Queensland Motel Employers Association, Industrial Organization of Employers and the Queensland Real Estate Industrial Organisation of Employers.

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

Mr M. Patti and Mr G. Muir of Employer Services Pty Ltd on behalf the Private Hospitals' Association of Queensland and others.

Mr C. Pollard of Jones Ross Pty Ltd on behalf of Building Service Contractors' Association of Australia - Queensland Division, Industrial Organisation of Employers, the Presbyterian and Methodist Schools' Association and the Motor Trades Association of Queensland, Industrial Organisation of Employers.

Mr M. Proctor for the Australian Sugar Milling Association, Queensland, Union of Employers.

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

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

Released: 30 October 2003