QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287 – application for declaration of a 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. B600 of 2005)

DEPUTY PRESIDENT SWAN
COMMISSIONER FISHER
COMMISSIONER ASBURY 27 June 2005

DECISION

The Queensland Council of Unions (QCU) has filed an application seeking:

(1) a General Ruling in regard to wage and allowance adjustments for award employees; and
(2) a Statement of Policy in regard to a Principle pertaining to the adjustments of wages and allowances from previous State Wage Case decisions from 1987 to 2004.

The application arises from the review of awards required by s. 130 of the *Industrial Relations Act 1999* (the Act).

Background

On 2 July 2004 the Commission convened a conference of interested parties to begin the second round of Award Review in accordance with s. 130 of the Act. At that time the Agenda for the Review, which had been arrived at by discussions with the key players from Award Review Mark I, contained six items. Parties attending the July 2004 conference were invited to comment on the appropriateness of the Agenda and given the opportunity to add items.

Further conferences in respect of Award Review Mark II were held on 17 September 2004, 16 November 2004 and 18 March 2005. During the course of these conferences, in principle agreement was reached on one issue to take forward, *viz*, that awards that had not been adjusted for previous wage and allowance increases available under State Wage Case decisions would have such adjustment applied. In the submissions of the QCU, this was to ensure that such awards did not contain provisions that were obsolete or needed updating (s. 126(c) of the Act) and thus establish current wage rates and allowances in awards.

At the commencement of the Award Review process in July 2004, the parties were provided with spreadsheets that had initially been prepared by the Department of Industrial Relations (DIR) for the first round of Award Review. The spreadsheets were subsequently reviewed by the QCU. These spreadsheets listed all awards that existed at the time and, on an award by award basis, showed whether an award had received all wage and allowance adjustments that had been granted for the period 1989 to 1997. The parties attending the conferences were asked to check the spreadsheets for accuracy as these would be used as a basis for the process of adjusting wages and allowances.

DIR undertook such process in respect of Crown awards and as a result some changes were made. The QCU and the Registry also reviewed the spreadsheets to ensure that the list of awards remained current. As some awards had been rescinded during the Award Review Mark I process, the list was updated to reflect these changes. Regrettably no other party reviewed the documentation.

At the conference of 17 September 2004 the QCU distributed a proposal regarding the wage and allowance adjustment. The proposal was that the Commission issue a General Ruling relating to the adjustments together with a Principle guiding the mechanics of the process. The QCU also provided a table of adjustments sought showing such matters as the quantum of the increases that had been granted, whether they had been granted by General Ruling or Statement of Policy and whether allowances had been capable of adjustment. Responses were sought from the parties by 15 October 2004 and were discussed at 16 November 2004 conference.

Responses were provided by a number of organisations including Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI), Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) (QRTSA), Registered and Licensed Clubs Association of Queensland, Union of Employers (RLCA), National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers (NMAA), Hardware Association of Queensland, Union of Employers (HAQ), Queensland Hotels Association, Union of Employers (QHA), The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers (RCEA), Queensland Cane Growers' Association Union of Employers (QCGA) and from two consultants *viz*. Employer Services and John Redsell. Some of the responses had been provided earlier and were relied on.

During the conference process DIR made two amendments to the proposed Principle. Following discussions between the QCU and DIR the amendments in relation to allowing access to the Economic Incapacity Principle of the Wages

Principles and reference to a single Member in the case of disputes were accepted by the QCU and were incorporated into their draft Principle.

The parties agreed to the process adjusting wage rates and allowances. It was agreed that the rates and allowances should be "decomposed" to those that applied as at 1 January 1987 and all available increases applied to that rate. 1 January 1987 was selected as it was from 1987 (to 1996) that wage increases were made available by Statement of Policy rather than by General Ruling. Under the successive Statements of Policy, wage increases had to be accessed on an award by award basis.

The major point of difference between the parties at the conferences and at the hearing was whether the wage increases should be granted by General Ruling or accessed on an award by award basis, as was the case when the increases were first made available. Largely because this difference could not be resolved at the conferences, the QCU decided to bring its application. This would allow the competing parties to argue their respective positions and have the Commission determine the matter.

QCU Submissions

The QCU provided comprehensive written submissions in support of its application. Its submissions traced the background to the application, the application itself, the legislative requirements, provided a history of Wage Cases from 1987 to 2004 together with the requirements to achieve increases during that period and other commentary in support of a General Ruling as the required outcome of this application.

The QCU sought an operative date earlier than 1 September 2005 as 1 September was the traditional operative date for **increase(s)** granted under the State Wage Case. In order to avoid complicating the calculations the QCU submitted that an operative date earlier than 1 September 2005 should be granted.

The Australian Workers' Union of Employees, Queensland Branch (AWU) Submissions

The AWU supported and adopted the submissions of the QCU.

DIR Submissions

DIR supported the QCU's application for a General Ruling.

As an employer, the Queensland Government was not impacted by any wage increases as all of its employees were covered by Certified Agreements which provided higher rates. It was noted however that two Awards would need to be adjusted for work related allowances, but that such adjustments would not have a significant impact. DIR acquiesced to these allowances being adjusted as required by the relevant amount.

Two issues with respect to the process were identified. These were:

(i) referral of an adjustment to a single Member; and
(ii) allowance adjustments.

With respect to the first issue, the QCU application provides *inter alia* that:

> "Where a dispute exists between the partes to a particular award in relation to the amendment of that award to include previous State Wage Case increases such dispute will be dealt with by a Commissioner sitting alone.".

In responding to QCCI objections that the outcome of the adjustment process was not known at this point, DIR proposed that parties be given a limited opportunity to seek referral to a single Member before the increase was gazetted. A two week timeframe was proposed.

In relation to the issue of allowance adjustments, DIR said that the State Wage Cases prior to September 1998 did not provide for allowances to be rounded off. The QCU application provided for such rounding off. In the circumstances DIR submitted that there should not be any retrospective adjustment for rounding off where such rounding off had not been previously available.

The final submission made by DIR was that the operative date from the General Ruling should be prospective but earlier than 1 September 2005.

QCCI Submissions

QCCI did not oppose the concept of adjusting awards for wage and allowance increases that had been available from 1987 to 2004. What was opposed was the proposed process, that is, by way of General Ruling rather than a case by

case basis. Further, QCCI were particularly concerned that because the calculations had not been concluded their members may be faced with "buying a pig in a poke" as they **could** not be aware of the extent of the increases they might be facing for each award. Although acknowledging that examination of the spreadsheets distributed in 2004 could provide some enlightenment in this respect, QCCI maintained that outcomes for each award should be identified and indeed detailed in the QCU application. Without that, QCCI was compelled to oppose the application.

The Full Bench asked QCCI during the hearing to comment on the DIR proposal of a two week grace period for parties to consider the outcome and, if necessary, to invoke the dispute settling process of the proposed Principle. After some discussion, QCCI conceded that this proposal could minimise its concerns.

QCCI also raised one other main objection. It submitted that Principle 4 of the *Declaration of Policy – State Wage Case 2004 Statements of Principles* (176 QGIG 698) already allows for increases under previous State Wage Case decisions to be accessible on application and for such applications to be "determined in accordance with the relevant Principles contained in those decisions, notwithstanding that all earlier Statements of Principles are otherwise set aside.".

QCCI noted that these Principles were agreed to by all parties to the 2004 State Wage Case, including the QCU. QCCI contended that by the present application, the QCU was seeking to "bypass" Principle 4 and to have increases granted that may not satisfy the relevant Principle contained in those previous decisions. Finally, QCCI submitted that there was no need for this application as previous wage and allowance increases can be accessed by all unions and can be heard before a single Member.

Other Employer Parties' Submissions

Australian Sugar Milling Association, Queensland, Union of Employers (ASMA) believed it was unlikely to be affected by the process, however, questioned the need for a General Ruling. ASMA considered the exercise to be an administrative one. The position of DIR with respect to allowances was supported.

National Retail Association Limited, Union of Employers (NRA) supported the position of the QCCI in opposing a General Ruling.

QRTSA shared the concerns of the other employer parties, especially those of QCCI.

By correspondence, the Motor Traders Association of Queensland Industrial Union of Employers (MTAQ) advised that it had no objection to any increases flowing from the Award Review process being done by way of General Ruling provided the decision noted the source of any discrepancy which resulted in the movement to rates/allowances.

By email, the Nursery & Garden Industry Queensland Industrial Union of Employers advised that the rates from the Nursery Industry Award – State were presently being reviewed. Also by email, John Redsell on behalf of various Grammar Schools advised that he was prepared to leave the matter to the Commission to determine having regard to the submissions made by the various parties.

QCU Response Submissions

Because the QCCI's outline of submissions had been provided on 3 June 2005, the QCU had responded to QCCI's objections in its written submissions. For completeness, QCU's responses are briefly set out below:

(i) Re: Bypassing Principle 4

In response to this contention QCU submitted that its application was made pursuant to s. 130 Review of Awards of the Act. This section requires the Commission to review an award, either of its own initiative or on the application of a party to an award within three years of it having been made or last reviewed under this section. The Commission must do what is required by s. 126 Content of awards, s. 127 Dispute resolution procedures in each award and s. 128 Awards that fix wage rates. Section 126 of the current Act in dealing with awards, highlights that the Commission must ensure that an award, amongst other things, provides for secure, relevant and consistent wages and employment conditions; and provides fair standards for employees in the context of living standards generally prevailing in the community (see ss.126(d) and (f)).

In the submissions of the QCU then, its application sought to do no more than was required by s. 130 of the Act.

In dealing with the QCU argument that if granted, the application would negate the requirements of Principle 4 that "applications will be determined in accordance with the relevant Principles," QCU provided detailed submissions about what those Principles required. The relevant Principles were those that operated from the 1987 State Wage Case through to the 1996 State Wage Case when general movements in wages were available by way of Statement of Policy and individual award applications had to be made.

In general terms the QCU submitted that the various requirements imposed to access the increases under the Statements of Policy, if they had not been previously incorporated through other processes, had now been incorporated into awards through the Award Review Mark I process. That comprehensive process resulted in standardising awards by, incorporating model clauses that had been developed through that process; had been State Wage Case requirements from 1987 to 1996 or were legislatively required. On that basis, there was nothing more to do to ensure the awards met the requirements of the relevant Principles.

(ii) General Ruling v Case by Case Approach

The QCU submitted that a General Ruling was required to prevent a multiplicity of enquiries into the same matter being undertaken (See: *Re Basic Wage* (1962) 50 QGIG 220). Further a General Ruling was considered to be the most expeditious way of ensuring outstanding wage and allowance adjustments are incorporated into awards.

As the QCU noted, it was not that QCCI opposed the merit of wage and allowance adjustments but more the issue of quantum.

(iii) Outcomes not Quantified

Given that QCCI had been prepared to compromise its position to take up the proposal put by DIR regarding a two week grace period to consider the calculations and notify a dispute about them, the QCU indicated it would amend its application to reflect DIR's proposal. The QCU proposed that the calculations be available on 1 August 2005 with an operative date for the General Ruling being 15 August 2005.

(iv) Rounding of Allowances

The QCU accepted the submission of DIR in this regard.

Conclusion

This application is brought pursuant to s. 130 of the Act. In essence it requires awards to be reviewed within three years of having been made or last reviewed under this section. By reference to s. 126 of the Act, the Commission must ensure, amongst other things, that an award provides for secure, relevant and consistent wages and employment conditions. In our view an application that seeks to ensure that awards provide for all relevant wages and allowance adjustments that have been made available by the Commission over the years as general wage movements is appropriate for consideration in the context of s. 130 of the Act.

In this matter we note QCCI's concerns that the application, if granted, will bypass Principle 4 of the current Wage Principles and further, that the increases being sought are available on application. Of course had award parties kept their awards current by accessing all wage and allowance adjustments when made available, no need would exist for this application. For various unexplained reasons, the applications for increases were not made at the time when they were first made available nor have they been made subsequently under Principle 4 and its predecessors. We think it timely and appropriate for the matters to now be dealt with. In effect, the application is seeking increases that were made available some nine to eighteen years ago.

We further accept that the requirements that were imposed by the Statement of Policy issued between 1987 and 1996 have now been incorporated, if not totally, then certainly, substantially into awards affected by this application as a result of Award Review Mark I and other legislative processes. In the circumstances we do not require awards to have any other clauses inserted into them as a result of this process, except that which identifies that increases have flowed as a result of this application. To this end we propose to adopt the Standard Clause included in the QCU Draft Application together with the following sentence at the end of the first paragraph as follows:

> "The adjustment to wages made on 15 August 2005 **(**or such other date as the Commission may determine after dealing with a dispute) arises from the second round of Award Review undertaken pursuant to s. 130 of the *Industrial Relations Act 1999* in 2005.".

In our view while not separately identifying each adjustment that had not been previously granted, the clause shows the source of the adjustment sufficiently. We consider that this sentence should be contained in subsequent clauses issued as a result of State Wage Cases, however, the form of the clause emanating from a State Wage Case is a matter to be determined by that Bench.

At the hearing of the application, the major point of contention between the QCU and QCCI (and some of the other employer parties) was that the outcomes of the exercise were unknown. Since the parties had agreed in principle to the wage and allowance adjustment exercise being undertaken under the purview of s. 130 of the Act, the Commission was able to secure funding from DIR for the Registry to undertake the calculations. This has required a computer program

to be written and the secondment of a dedicated officer to input the information. The project commenced in the Registry in April 2005. A substantial number of awards have been processed but the project has not been completed. Although we think that a review of the spreadsheets by employers would have shown the increases likely to flow from the process, we acknowledge that precise wage and allowance increases were not included in the QCU application and are not fully known at this time.

We consider that the proposal put forward by DIR, and accepted by the QCCI and the QCU, of a two week grace period, helps to overcome this problem and provides an opportunity for disputes to be notified. We consider however that releasing all results on 1 August 2005 as proposed by the QCU may inhibit proper consideration by employer parties in particular. In discussions with the Deputy Industrial Registrar, it appears that some calculations will be completed prior to that date. At this stage it is proposed to release one section of the calculations on 18 July 2005 with any disputes in relation to those being required to be notified by 1 August 2005. A second and final round will be released on 1 August, with disputes to be notified by 15 August 2005. In both cases, subject to the application of the Economic Incapacity Principle, the increases will be operative from 15 August 2005.

As a dispute may result in a particular award being removed from the operation of the General Ruling until it is resolved, the party notifying the dispute bears the onus of establishing the grounds upon which the General Ruling should not operate or be deferred.

General Ruling

Although differential results will flow from the review and calculation process, we are satisfied that the matter is best dealt with by way of General Ruling. As we have already said, the increases in question are generally many years old and the activity that was required at the time to secure them has been undertaken under other guises. In the circumstances we are prepared to issue the General Ruling as sought with the operative date as indicated above.

Statement of Policy

We are also prepared to issue a *Statement of Policy: Principle for Adjustment of Wage and Allowances from Previous State Wage Case Decisions – 1987 until 2004 inclusive*. In addition to the amendment to the Standard Clause noted above, the word "Commissioner" will be replaced by "Member" wherever it appears in point two. This reflects the current nomenclature.

Given the General Ruling is to operative from 15 August 2005, even allowing for disputed claims to be processed, we consider the Principle should operate until 31 December 2005.

Disputed cases will be referred to a nominated Member.

Wage Principles

In light of our decision we would raise for the parties' consideration the continued relevance of Principle 4 of the current Statement of Principles. This might be a matter best canvassed before the next State Wage Case Bench.

We order accordingly.

D.A. SWAN, Deputy President.

G.K. FISHER, Commissioner.

I.C. ASBURY, Commissioner.

Hearing Details:
2005 10 May
10 June

Appearances:
Ms D. Ralston on behalf of the applicant.
Mr J. Martin and Mr D. Broanda for The Australian Workers' Union of Employees, Queensland.
Mr L. Gillespie for the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.
Mr K. Law for the Transport Workers' Union of Australia, Union of Employees (Queensland Branch).
Mr S. Nance for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.
Mr R. Gillespie and with him Ms E. Yabsley for the Department of Industrial Relations.
Mr R. Beer for the Local Government Association of Queensland Inc.
Mr R. Curtis for the Brisbane City Council.
Mr P. Lucas for Queensland Rail.
Mr G. Trost for Queensland Cane Growers' Association Union of Employers.
Mr P. Warren for Australian Sugar Milling Association, 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 Organisation of Employers).

Released: 27 June 2005