QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287 – application for declaration of General Ruling
– s. 288 – application for declaration of Policy

The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B855 of 2005)

AND

Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B863 of 2005)

PRESIDENT HALL
COMMISSIONER BROWN 15 August 2005

DECISION

On 7 June 2005, the Australian Industrial Relations Commission (AIRC) released its Decision on an application by The Australian Council of Trade Unions seeking a safety net adjustment of $26.00 per week in all award rates with a commencer of adjustment in wage related allowances. The AIRC granted an increase of $17.00 per week. Allowances were increased consistently with the Decision in *Furnishing and Glass Industries Allowances*, print M9675.

The purpose of the applications now before the Queensland Industrial Relations Commission (QIRC) is to flow the Decision of the AIRC into awards made under the *Industrial Relations Act 1999* and awards continued in existence by that Act. The applications also seek the comparable (3.0%) increases in allowances and service increment payments. Additionally, the applications seek an adjustment of $17.00 per week to the Queensland Minimum Wage fixed pursuant to s. 287(2). Provision is to be made for absorption into over-award payments. The method selected by the Applicants in order to flow the Australian Decision into State awards is the making of a General Ruling. That methodology, we should add, has not been opposed by any party.

Additionally, the applications seek modification of the Declaration of Policy of 2004 dealing with what might loosely be described as the Commission's Wage Fixing Principles (see 167 QGIG 698) to take account of changes and operative dates, the quantum of any wage adjustment granted in these proceedings and consequential amendments to take effect of the General Ruling (if made). Once again, those modifications were not opposed.

After the Declaration of Intent issued on 23 June 2005, (see 179 QGIG 411) the Queensland Council of Unions sought to amend its application to seek modification of the Declaration of Policy of 2004 to accommodate a Decision given by a Full Bench of this Commission in *Declaration of General Ruling – Wage and Allowances Increases – Wage Case Adjustments 1987 – 2004*, (see 179 QGIG 412). It is convenient to record at this point that this Full Bench has determined not to deal with that issue at this stage. We certainly do not reject the relief sought. However, the issues arising out of the Decision at 179 QGIG 412 may not yet be entirely resolved. It is not appropriate for each of two Full Benches of the Queensland Industrial Relations Commission to attempt to deal with the same matter at the same time. We propose to publish an Interim Statement of Policy updating the Declaration of Policy of 2004 to deal with any relief granted upon the applications for a Declaration of General Ruling in these proceedings. The parties are at liberty to re-list the aspect of this matter relating to the case at 179 QGIG 412 when the Full Bench dealing with that matter has finished its work. A variation of any Declaration of General Ruling might also be necessary.

In our view the applications are impossible to resist. The AIRC took account of the national economy. The Queensland economy is but part of the national economy. We note in particular, that the AIRC took account of the effect of the drought upon rural industries in Queensland and in New South Wales. Plainly, there will be occasions on which the disparity between the performance of the National economy and the Queensland economy will require this Commission to opt for increases which do not mirror the increases granted by the Federal Commission. But there is no utility in adopting that course whether discrepancies are small; compare *State Wage Case 2000* (see 164 QGIG 372). In any event, the economic *indicia* to which we have been taken (and which are not disputed) indicate that the Queensland economy has out-performed the National economy, is stronger than the national economy and offers a more secure foundation for optimistic forecasts for the ensuing twelve month period. In those circumstances, it would be wrong for this Commission to turn its back upon the decision of the AIRC where there is no suggestion that the decision, which has been followed in Western Australia, South Australia, Tasmania and New South Wales, is economically or conceptionally flawed.

We note also the force of the submission of the Queensland Government that whereas the AIRC is required to set award rates which operate as safety nets, the *Industrial Relations Act 1999* requires that consideration be given to social as well as economic factors. That submission we might add largely meets the submission of Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) that, because a series of decisions of the AIRC and this Commission upon National/State wage matters are replete with references to "low paid workers", a definition of that target area should be provided. The other answer to QCCI's contention is, of course, that awards of the QIRC have a role to play in giving content to the "no disadvantage test" in the negotiation of certified agreements.

Two particular matters should be mentioned. First, by its written submission the Queensland Motel Employers Association, Industrial Organization of Employers (QMEA) seeks to oppose the applications *in toto* or, alternatively, as to quantum on the basis of "international competition". The case before the AIRC was a test case. It involved a number of awards. *The Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998* was one of those awards. There was ample opportunity for arguments about international competition to be provided on that occasion. To accept the submission of the QMEA in circumstances in which the national increase is to flow into National awards and awards in Western Australia, South Australia, Tasmania and New South Wales, would grant Queensland employers a substantial domestic competitive advantage. We are not satisfied that there is any utility in attempting to improve the competitive position of the Queensland Division of the industry by depressing the incomes of persons on moderate incomes and (often) insecure employment.

Second, the Queensland Cane Growers' Association, Union of Employers (QCGA) opposes the applications and, in the alternative, seeks to have a date of operation of 1 January 2006 instead of the traditional date of operation of 1 September 2005. A date of operation of 1 June 2006 would, of course, ensure that award rates in the field sector of the sugar industry do not increase (at all) in the 2005 season. It is not clear to the Bench whether QCGA seeks to deny the increase to all Queensland workers or to deny the increases only to those engaged in THE field sector of the sugar industry. If the former proposition be correct, we can see no justification for denying the very many because of the circumstances of the very few. And on such figures as QCGA was in a position to muster, the total work force (excluding family members) in the field sector of the sugar industry, it fell well short of 5,000. If the submission relates to the field sector of the sugar industry alone it should have been progressed, as it has on numerous other occasions, pursuant to s. 287(5). Here, it is sufficient to observe that the evidence which QCGA has opened, is (on its face) less persuasive than evidence led on previous occasions in support of cases which failed.

We grant the application for a General Ruling. The date of operation will be 1 September 2005. We shall declare an Interim Statement of Policy dealing with consequential matters.

Dated 15 August 2005.

D.R. HALL, President.

D.K. BROWN, Commissioner.

VICE PRESIDENT LINNANE

I agree with the reasoning of the majority on the granting of the application for a General Ruling and the operative date. I do however dissent in respect of the majority's decision on the need for an Interim Statement of Policy and the comments contained in the following paragraph of the majority decision:

> "After the Declaration of Intent issued on 23 June 2005, (see 179 QGIG 411) the Queensland Council of Unions sought to amend its application to seek modification of the Declaration of Policy of 2004 to accommodate a Decision given by a Full Bench of this Commission in *Declaration of General Ruling – Wage and Allowances Increases – Wage Case Adjustments 1987 – 2004*, (see 179 QGIG 412). It is convenient to record at this point that this Full Bench has determined not to deal with that issue at this stage. We certainly do not reject the relief sought. However, the issues arising out of the Decision at 179 QGIG 412 may not be entirely resolved. It is not appropriate for each of two Full Benches of the Queensland Industrial Relations Commission to attempt to deal with the same matter at the same time. We propose to publish an Interim Statement of Policy updating the Declaration of Policy of 2004 to deal with any relief granted upon the applications for a Declaration of General Ruling in these proceedings. The parties are at liberty to re-list the aspect of this matter relating to the case at 179 QGIG 412 when the Full bench dealing with that matter has finished its work. A variation of any Declaration of General Ruling might also be necessary.".

The decision referred to by the majority as 179 QGIG 412 deals with application B600 of 2005. B600 of 2005 was an application made pursuant to s. 130 of the *Industrial Relations Act* 1999 (Act) by the Queensland Council of Unions (QCU) and it arose out of the second review of awards. As identified in the grounds to that application the "issue was to ensure that any award that had not been adjusted for previous wage and allowance increases (those granted in accordance with *State Wage Case decisions*) would have such adjustment applied" and the application would "ensure that the wage and allowance rates contained within the awards were current".

The increases to wages and allowances sought in B600 of 2005 related to a period 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. The decision of the Full Bench in B600 of 2005 is found in *Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of*

Employers and Others (2005) 179 QGIG 412. As the Full Bench noted in its decision "had 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.".

The QCU in B600 of 2005 sought a new principle which would facilitate the administration of the wage and allowance adjustments by way of General Ruling whilst also "accommodating for instances where disputes existed over such adjustment". B600 of 2005 cannot be said to be the "same matter" as the matter before this Full Bench.

The matter before this Full Bench is an application for a General Ruling under s. 287 of the Act and a Statement of Policy under s. 288 to adopt the level of arbitrated wage adjustment determined in the *Safety Net Review 2005* decision issued by the Australian Industrial Relations Commission into all State awards and to adjust existing allowances within awards which relate to work or conditions which have not changed and service increments by the percentage equivalent increase associated with the C10 rate of pay within the *Engineering Award – State 2002* and to increase the level of the Queensland Minimum Wage as it applies to all employees.

The release of that decision in *Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others* (2005) 179 QGIG 412 concluded B600 of 2005. Subsequently correspondence was received from the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) seeking a conference to address implementation of that decision. At the request of the Full Bench a Conference of the parties to B600 of 2005 was convened by Commissioner Fisher immediately after the conclusion of the hearing in B855 of 2005 and B863 of 2005 on 8 August, 2005.

I understand Mr Stephen Nance (representing the QCCI in B600, B855 and B863 of 2005) following that Conference, asked Commissioner Fisher to convey to this Full Bench that the issues in B600 of 2005 that he had raised during the course of the hearing in B855 and B863 of 2005 earlier that day, had been resolved. Commissioner Fisher conveyed the Mr Nance's comments to me prior to 2.00 p.m. on that afternoon. The QCCI's position was confirmed in correspondence to the Industrial Registrar dated 10 August 2005. A further copy of that correspondence was received by Members of this Full Bench at 9.33 a.m. on 12 August 2005. The Full Bench in B600 of 2005 reconvened on 11 August 2005. I have had the opportunity to read the transcript of that proceeding. I am satisfied that all concerns the QCCI raised during the hearing of B855 and B863 of 2005 about B600 of 2005 have been resolved. The QCCI has, in my opinion, acted appropriately in conveying its position to this Full Bench following the hearing of the matter on 8 August 2005.

In any event I do not accept that the application in B600 of 2005 deals with "the same matter" as that currently before this Full Bench. The principle sought in B600 of 2005 was a stand alone principle such as the Equal Remuneration Principle and the Principle for Incorporating Terms of Industrial Agreements into Awards. Such principles have no bearing on principles established by State Wage Case benches.

The amendment sought by the QCU on 8 August 2005 (and foreshadowed on 5 August 2005) referred to in the abovementioned paragraph of the majority decision is as follows:

(i) the insertion in Principle 3 of the Statement of Principles of a particular clause to be included in the 90 odd awards that were the subject of the decision in B600 of 2005; and

(ii) the deletion of Principle 4 from the Statement of Principles.

During the course of the hearing on 8 August 2005 no party raised any concern whatsoever regarding the amendment sought by the QCU. The QCCI not only consented to the QCU's application being amended but it also consented to the content of the amendments. Whilst the amendments sought reflected comments by the Full Bench in B600 of 2005, the Bench in that matter said that they "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". It was for this Full Bench to determine the matter.

There is no need whatsoever for an Interim Statement of Policy nor is there a need for the parties to have to re-list this application when the Full Bench dealing with B600 of 2005 has "finished its work". The Full Bench in B600 of 2005 has "finished its work" and further does not have before it any of the Principles that are before this Full Bench.

Dated 15 August 2005.

D.M. LINNANE, Vice President.

Appearances:

Mr D. Broanda, for The Australian Workers' Union of Employees, Queensland.

Mr S. Fardon and Mr C. Barton, for the Queensland Council of Unions.

Ms K. Stephen, for the Queensland Government.

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

Mr D. Pratt for Australian Industry Group, Industrial Organisation of Employers (Queensland).

Ms V. James-McPhee and Mr N. Tindley, for National Retail Association Limited, Union of Employers.

Ms M. Darwin for Aged Care Queensland Inc.

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

Ms R. Scott, and Ms C. Mibus, for Queensland Motel Employers Association, Industrial Organization of Employers.

Mr C. Muir, of Employer Services Pty Ltd, on behalf of Private Hospitals Association Qld Inc; Bowls Queensland; Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers; Australian Dental Association (Queensland Branch) Union of Employers; Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers; and Queensland Community Services Employers Association.

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

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

Mr J. Moore for the Queensland Hotels Association, Union of Employers.

Released: 15 August 2005