

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *In the making of the Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021* [2021] QIRC 292

PARTIES: **Western Downs Regional Council**

AND

Australian Workers Union of Employees, Queensland

United Voice, Industrial Union of Employees, Queensland

CASE NO: CB/2021/36

PROCEEDING: Application for certification of an agreement

DELIVERED ON: 27 August 2021

HEARING DATE: 27 August 2021

MEMBER: Hartigan IC

HEARD AT: Brisbane

ORDER:

- 1. The time for filing the application for certification in CB/2021/36 is extended, pursuant to s 539(j) of the *Industrial Relations Act 2016* (Qld), to 16 August 2021.**
- 2. The *Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021* is certified.**

CATCHWORDS: INDUSTRIAL LAW – COLLECTIVE BARGAINING – application for certification of an agreement – requirements for certification – agreement certified

LEGISLATION: *Industrial Relations Act 2016* (Qld) s 189, s196, s 216, s 227, s 228, s 539

APPEARANCES: Ms E. McGovern for Western Downs Regional Council

Mr D. Marrs for Australian Workers Union of Employees, Queensland

Mr J. Marks for United Voice, Industrial Union of Employees, Queensland

Reasons for Decision

- [1] The Western Downs Regional Council ('the Council') has applied to certify the *Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021* ('the agreement').
- [2] The named parties to the agreement are the Council and the following employee organisations:
 - (a) Australian Workers Union of Employees, Queensland ('the AWU'); and
 - (b) United Voice, Industrial Union of Employees, Queensland ('United Voice').
- [3] Section 189(3) of the *Industrial Relations Act 2016* (Qld) ('the Act') provides that if an agreement has been signed by or for all the parties, the application for certification must be made within 21 days after the agreement is signed. The agreement was signed on 23 July 2021 and, accordingly, pursuant to s 189(3) of the Act, the application should have been filed by no later than Friday, 13 August 2021. The application was instead filed on Monday, 16 August 2021.
- [4] The apparent non-compliance with s 189(3) of the Act was raised with the parties by the Industrial Registry and they were invited to make written submissions. The Council filed written submissions and an affidavit of Joel Mellish on 26 August 2021.
- [5] At the hearing of the matter on 27 August 2021, the Council made an oral application for an extension of time to file the application to the date on which it was filed, namely 16 August 2021. United Voice and the AWU consented to the application for an extension of time. During the hearing on 27 August 2021, I issued orders granting an extension of time. These are, *inter alia*, the reasons for that decision.
- [6] The material relied on by the Council identified that the reason for the delay in filing the application was a misapprehension, on behalf of the Council, as to when an application should be filed. The Council erroneously considered that an application was to be made 28 days, rather than 21 days, after the agreement had been signed.
- [7] Relevantly, I note that the application for approval of the certified agreement and the supporting affidavit of Mr Musgrove, Chief Executive Officer of the Council, was

prepared within time, having been signed and executed by Mr Musgrove on 10 August 2021. The error arose simply due to a misapprehension as to the time for filing.

- [8] The purpose of s 189(3) of the Act appears to be to ensure applications for certification of agreements are made in a timely way following the signing of the agreement by or on behalf of all the parties. A failure to comply with s 189(3) of the Act is an error going to the substance of the proceedings.
- [9] Section 539 of the Act provides the Commission with powers incidental to the exercise of jurisdiction. These powers include, *inter alia*, a power to correct and amend an error of substance. Relevantly s 539(e) of the Act is in the following terms:

539 Powers incidental to exercise of jurisdiction

Except as otherwise provided for by this Act or the rules, the court, commission or registrar may—

- ...
- (e) correct, amend or waive an error, defect or irregularity in the proceedings, whether substantive or formal; and
- ...

- [10] Section 539(j) of the Act provides a power to extend a prescribed or stated time as follows:

539 Powers incidental to exercise of jurisdiction

Except as otherwise provided for by this Act or the rules, the court, commission or registrar may—

- ...
- (j) extend a prescribed or stated time, before or after expiry of the time; and
- ...

- [11] The application was filed 3 days out of time. The Council concedes that the application was filed late due to the Council's misapprehension as to when the application should have been filed. I note that all parties consent to the application for an extension of time. In the circumstances of the matter, I consider that there is no prejudice to either the parties to the proposed agreement or to the agreement that has been struck by the parties if leave is granted. For these reasons, I consider it appropriate to exercise my discretion to grant an extension, pursuant to s 539(j) of the Act, to extend the time for filing the application to 16 August 2021.
- [12] Following the granting of the extension of time, I consider the application to be a 'Part 5 application' within the meaning of the Act¹ and consequently I must consider the matters referred to in s 193 of the Act in deciding the application.

¹ *Industrial Relations Act 2016*, s 191.

[13] In this regard, I find that the agreement:

- (a) is signed by all the above-mentioned parties.²
- (b) applies to the Council and the Council employees.³

[14] Having regard to the material filed⁴ and the submissions made by the parties I am satisfied that:

- (a) each relevant requirement under Ch. 4, Pt. 5, Div. 2, Sub-Div. 3 of the Act has been satisfied; and
- (b) there is nothing in the certified agreement which would require the Commission to refuse to grant the application under Ch. 4, Pt. 5, Div. 2, Sub-Div. 3 of the Act.

[15] Accordingly, the application to certify the *Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021* is granted.

[16] The *Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021* operates from the day it was certified, namely 27 August 2021.

[17] Although the nominal expiry date is 27 August 2024, it continues to operate until it is terminated under s 227 or s 228 of the Act.

[18] I make the following orders:

- 1. The time for filing the application for certification in CB/2021/36 is extended, pursuant to s 539(j) of the *Industrial Relations Act 2016 (Qld)*, to 16 August 2021.**
- 2. The *Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021* is certified**

² *Industrial Relations Act 2016* s 196(1).

³ See clause 1.2 of the *Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021*.

⁴ Application for certification and affidavit of Mr Ross Musgrove each filed in the Industrial Registry on 16 August 2021.