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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

MS D M LINNANE, Vice President
MR D L O'CONNOR, Deputy President
MS G K FISHER, Commissioner

No AR4 of 2013

INDUSTRIAL RELATIONS ACT 1999

S130 – REVIEW OF AWARDS

INDUSTRIAL RELATIONS ACT 1999

BRISBANE

9.03 AM, WEDNESDAY, 30 OCTOBER 2013

Continued from 19.7.13

DAY 2

FULL BENCH

**RELEASED TO
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THE COMMISSION RESUMED

[9.02 am]

5 COURT OFFICER: The Commission is now resumed in AR 4 of 2013.

THE VICE PRESIDENT: Thank you. I'll take appearances, please.

10 MS D. RALSTON: Good morning. My name is Deborah Ralston, and I appear on behalf of Together Queensland, Industrial Union of Employees.

THE VICE PRESIDENT: Thank you.

15 MR MARTIN: If it please the Commission, my name is Martin. I appear for the Queensland Council of Unions, and affiliated unions.

THE VICE PRESIDENT: Thank you.

20 MR N. HENDERSON: If the Commission pleases, Henderson, initial N., I appear for Queensland Services Industrial Union of Employees.

THE VICE PRESIDENT: Thank you.

25 MS C. NARANJA: My name is Cleminson Naranja, I'm from the Queensland Nurses Union.

THE VICE PRESIDENT: Thank you.

30 MS K. ARMSTRONG: May it please the Commission, my name is Armstrong, initial K., from the Public Service Commission on behalf of Queensland Government.

35 THE VICE PRESIDENT: Thank you. This has been called on as a result of correspondence from the [indistinct] assigned by Peter McKay from the Queensland Public Service – sorry, the Public Service Commission, and to give parties the opportunity to express a view as to what happens with next Monday. So, perhaps, Ms Armstrong.

40 MS ARMSTRONG: Sure. Thank you, members of the bench. I'll keep it fairly short, but I'm happy to answer any other questions that might arise. As the Commission is aware, on the 17th of October, 2013, the Queensland Government introduced into Parliament the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Acts Amendment Bill* (2013). The Bill substantially amends chapter 5 of the Industrial Relations Act, which deals with awards of the Queensland Industrial
45 Relations Commission. And the government has indicated the Bill will become law in November this year.

Specifically, the Bill stops any matters currently on foot, in relation to the making or amending of awards or a review of an award, and refers that matter to be considered as part of the award modernisation process, to commence in the new year. In light of this the PC respectfully submits that the Commission acts accordingly, and stop
5 dealing with the matter number AR 2013/4, and refers that matter on to be considered as part of the award modernisation process to commence in the new year. If it please the Commission.

10 THE VICE PRESIDENT: Thank you. Yes. Ms Ralston.

MS RALSTON: Thank you. The bench would be aware that this matter, in its previous guise, has been ongoing for some time, and that the parties have now finalised all submissions in relation to the issue, and that the matter was listed for further oral submissions next Monday. What we have before us is only a Bill, which
15 at this stage has not even progressed through committee stage, which is due on Friday. And the timeframe for progress in that Bill into legislation, although subject to some parliamentary allocation, is not a pre-determined outcome. And it would be presumptuous of this full bench to accept a position to abandon what is, really, the final stages of this exercise, in light of the fact that we only have before us a Bill, and
20 not a final piece of legislation.

It's our position that the matter should proceed on Monday. And we certainly have, as you'd be aware, submitted our material, and there is a host of other material before this full bench. I should also indicate that it is particularly presumptuous of the PSE
25 to indicate that in some way this Commission should refer this matter onto a modernisation exercise. Once again, because there's no clear and unequivocal position as to what the legislation will reflect once it is in – if and when it is finalised by this parliament. So, our position is that we proceed, and we really are at the death knell in relation to this issue.

30 THE VICE PRESIDENT: Yes. Ms Martin.

MR MARTIN: If it please the Commission, I'd support the submissions of Ms Ralston this morning. I think the language she used is appropriate in saying that the correspondence from the Public Service Commission is presumptuous. This Bill, as
35 it is, is to go before a public hearing on Friday for the parliamentary committee that's responsible. One of the submissions that will be made to that parliamentary committee is that the – many aspects of the Bill are ill-conceived, but in particular, that with respect to award modernisation. And the concept that there's any necessity for harmonisation with the Fair Work Act, in its historical context, is well and truly
40 misguided, given that the award modernisation process that was undertaken by the Fair Work Commission was as a result of thousands of awards being folded into around about 200, and in a very short timeframe. We're not dealing with the same scenario.

45 It will be our submission to that parliamentary committee that there is no necessity for an award modernisation process within this jurisdiction, because the process that

is underway, on foot, with respect to this specific application, is consistent with the legislative scheme that has dealt with a process of modernisation since 1999. That is all state awards have been subject to an award review process every three years under the supervision of this Commission, and the parties have worked very well together, in the main, up until quite recently, in keeping awards maintained to become relevant. So, the only purpose that we could see - - -

THE VICE PRESIDENT: We've still got a group of local government awards that haven't been done for six or seven years or something, so. But, anyway.

MR MARTIN: I - - -

THE VICE PRESIDENT: There's still federal awards and what have you.

MR MARTIN: I take the point.

THE VICE PRESIDENT: Yes.

MR MARTIN: That's been a - - -

THE VICE PRESIDENT: Queensland Rail, I don't think has been done.

MR MARTIN: Some – yes. But there would be exceptions where there's been a reversal of jurisdiction, and that's, I guess, shoring up time, I guess, to some extent. But, that process – well, the mechanism is there to deal with it under the legislation. And as I've previously stated, that will be one of the submissions that's made to the parliamentary committee, that there is a misunderstanding of the need for that type of legislation in this jurisdiction. And, in fact, it would be an insult to this tribunal to say that the award review process has not been dealt with adequately, and to the satisfaction of the parties. If it please the - - -

THE VICE PRESIDENT: I think – doesn't the award review process go out of existence with the legislation?

MR MARTIN: That's what I'm saying. Well, that's – if - - -

THE VICE PRESIDENT: Right. So.

MS RALSTON: If it's passed.

MR MARTIN: If the legislation is passed.

THE VICE PRESIDENT: Goes through. Yes. Yes.

MR MARTIN: Yes. So, unless we're accepting that process is farcical: that this government has such contempt for parliamentary process that parliament simply becomes a sausage machine, and due process is not followed. So, if we are, if that is

the submission of the Public Service Commission, then I'll be happy to repeat that to the parliamentary committee that's considering the legislation. So it is practise, I would suggest, that any tribunal deals with the legislation that's before it. And we respectfully submit that Monday's proceedings should continue. If it please the
5 Commission.

THE VICE PRESIDENT: Yes.

MR HENDERSON: We support those submissions, Vice President. Both Ms
10 Ralston and Mr Martin. In our view, the correspondence from the Public Service Commission erroneously assumes that the Bill has some force of law. Plainly it does not. And one can only guess what parliament may well do on the 14th of November. It's – in our view, the matter is substantially completed. The submissions on the 4th of November will not be significant, pretty much. And it seems, to us, the parties
15 have said all that they're likely to say in this matter. And if the bench is of a mind to issue a decision before the 14th, so be it. But, there's no reason at this point, in our submission, for the bench to take a different course to that which was already in place. If the Commission pleases.

20 THE VICE PRESIDENT: Yes.

MS NARANJA: The QNU support the submissions presented by Together
Queensland, the ASU and the QCU. And we respectfully request Monday's
25 proceedings continue.

THE VICE PRESIDENT: Thank you. Have you [indistinct]

MS ARMSTRONG: It's clearly not the Public Service Commission that – our
30 submission is clearly not that this Bill is a fait accompli. We understand the matter has been going for some time. We're simply submitting that there's no utility for any of the parties in pressing the hearing next week. The Bill has been referred to the legal affairs and community safety committee, with a requirement to report back to Parliament on the 14th of November, and government has stated its intention to have this matter debated and passed by Parliament in the final sitting week of 2013.
35 Their intention is that. The government, through the Bill in question, has clearly indicated their legislative intent with respect to conducting an award modernisation process, and managing award matters currently on foot. And the Public Service Commission submits it would be – there's no utility, and it would be folly if the Commission didn't take cognisance of the Bill and its content in determining the
40 Commission's action, particularly in light of the impending timeframes regarding the Bill's passage – potential passage through Parliament.

The award modernisation process could, and I imagine will, result in some
45 significant changes to the current content of awards, and to ensure there's a balance between giving consideration to these award – to the award review matters currently on foot, and the impending award modernisation process. The government has clearly provided a facility in section 8222 of the Bill to stop the Commission dealing

with those award matters currently on foot. But, importantly for all parties involved, provide a clear to the direction to the Commission to consider those stop matters when the Commission receives an award modernisation request relating to the stopped matter. This facility will allow the Commission to give due consideration to
5 both the stopped matter and the award modernisation process concurrently, as opposed to dealing with the matters in isolation, and potentially having conflicting outcomes.

10 The Public Service Commission considers it inappropriate and an ineffectual use of the Commission and the parties' limited time and resources, if the Commission was to attempt to rush through and finalise award matters such as this, prior to the Bill in question being considered, and potentially becoming an Act in November 2013. May it please the Commission.

15 THE VICE PRESIDENT: Thank you. We'll just resume. Sorry, we'll adjourn, I should say. Thank you.

20 **THE COMMISSION ADJOURNED** [9.14 am]

THE COMMISSION RESUMED [9.16 am]

25 THE VICE PRESIDENT: Please be seated. Having heard from the parties, and having considered the correspondence of the Public Service Commission, we are of the view that we should hear the matter on Monday, given that the parties have put all their submissions in. We do acknowledge, however, that the Bill, if passed, as
30 currently provided for, will have a serious impact upon any decision emanating from the matter. On that basis we – sorry – we reconvene at 11.30 on Monday.

MS RALSTON: Just for the - - -

35 THE VICE PRESIDENT: Yes.

MS RALSTON: Sorry. Vice President, just before you rise, for the purposes of Monday's proceedings, it's listed at 11.30. I anticipate that we would only require a short duration of time, because the written material is provided.

40 THE VICE PRESIDENT: I expect that.

MS RALSTON: So, I had anticipated that the bench wouldn't be sitting past lunch. Is that – would that - - -

45 THE VICE PRESIDENT: 1 o'clock, I would think.

MS RALSTON: Yes.

THE VICE PRESIDENT: If it goes for an hour and a half it would be a long - - -

MS RALSTON: It would be a long series of activities. Yes. So, thank you.

5 THE VICE PRESIDENT: So – but then – yes. Anyway. So I expect that - - -

MS RALSTON: It depends how verbose Mr Herbert is. If he turns up.

10 THE VICE PRESIDENT: You said it. I might have said it. But I stopped myself.
But, anyway. Yes. It'll be a relatively short. I just expect that anything in addition
to the submissions are already provided. That's all.

MS RALSTON: Thank you.

15 THE VICE PRESIDENT: Okay. On that basis I'll adjourn – we adjourn, sorry.

**THE COMMISSION ADJOURNED at 9.18 am UNTIL
MONDAY, 4 NOVEMBER 2013**