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## TRANSCRIPT OF PROCEEDINGS

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### QUEENSLAND INDUSTRIAL

### RELATIONS COMMISSION

### FULL BENCH

**MS D.M. LINNANE, Vice President**

**MR D.L. O'CONNOR, Deputy President**

**MS G.K. FISHER, Commissioner**

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**Attachments - NO**

**No. AR6 of 2013**

**INDUSTRIAL RELATIONS ACT 1999**

**S130 – REVIEW OF AWARDS**

**QUEENSLAND INSTITUTE OF MEDICAL RESEARCH (QIMR) AWARD 2003**

**BRISBANE**

**10.30 AM, FRIDAY, 19 JULY 2013**

**DAY 1**

**HEARING**

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

VICE PRESIDENT LINNANE: Okay. So we might take appearances. We're without Commissioner Fisher at the present time, but I think this is down simply for programming, so I might take appearances in AR/6, which is the Queensland Institute of Medical Research Award. Thank you.

5

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

VICE PRESIDENT LINNANE: Thank you.

10

MR G. O'DONOGHUE: Gerard O'Donoghue, the chief human resources officer for the Queensland Institute of Medical Research.

VICE PRESIDENT LINNANE: Thank you.

15

MR G. WALLACE: And may it please the bench. My name's Grant Wallace. I'm appearing on behalf of the Public Service Commission.

VICE PRESIDENT LINNANE: Thank you.

20

MR D. CRUTE: It if pleases the Commission. My name's Crute, initials D. I appear on behalf of the Queensland Nurses' Union employees.

VICE PRESIDENT LINNANE: Thank you. So – yes.

25

MS RALSTON: The purposes of this matter – and I know you've reached for your folder - - -

VICE PRESIDENT LINNANE: Callover.

30

MS RALSTON: - - - to find some scheduling.

VICE PRESIDENT LINNANE: [indistinct] yeah.

35 MS RALSTON: If I can just alert the Commission to a couple of issues, and it might be that the PSC can respond to these, and then it might truncate the work involved in this particular matter.

VICE PRESIDENT LINNANE: Okay.

40

MS RALSTON: The Commission may be aware that there is a separate activity being undertaken by the Fair Work Commission, the modernisation and termination of enterprise instruments.

45 VICE PRESIDENT LINNANE: Yes.

MS RALSTON: It's (2013) FWC 2790, by way of a statement issued by Senior Deputy President Acton. And Senior Deputy President Acton is alerting the parties, as the Fair Work Commission has done over a period of time, of the impending date for dealing with those enterprise instruments, and a series of activities that would  
5 need to be undertaken in that jurisdiction. Now, the nature of the Queensland Institute of Medical Research Award 2003 is that it was an instrument that had application in the state of jurisdiction. It had application up until the – up until the late 2000s. It is now subject to federal regulation, but because of the nature of QIMR, it has the potential – quite clear potential to be drawn back into the state  
10 jurisdiction. It's housed under Queensland Health's portfolio mix. It has a reporting minister, which is the Minister for Health.

It's an identifiable statutory entity, and it's an identifiable statutory entity that – by virtue only of the fact that it hasn't been kept in the state jurisdiction, as some other  
15 entities were – is in the federal jurisdiction. Our principal concern and reason for identifying it for the purposes of this particular review exercise is to really clarify the intention of that particular instrument, because what we wouldn't want to find is that we begin an exercise in the federal jurisdiction, the instrument isn't successful, for example, in being retained as a modern enterprise instrument, becomes subject to the  
20 modern award, award is declared obsolete in the state jurisdiction, and then QIMR is bought back into the state jurisdiction, because we face similar difficulties as to what were outlined in A/2013/3. So this is really – it might be that we're able to clarify those issues this morning with some degree of robustness. If we can't, then obviously we need to look at dates and proceed accordingly.

25 VICE PRESIDENT LINNANE: Yes, Mr Wallace.

MR WALLACE: Thank you very much. May it please the Commission. The Public Services Commission – or PSC – supports the Full Bench's proposal to  
30 declare obsolete the Queensland Institute of Medical Research Award dated 2003, which is identified in the list of awards titled Corporation Awards, and posted on the QIRC website in relation to this particular award review process. As an officer of the PSC, I can inform the Full Bench that my principals are not aware of any intention of the Queensland Government to reclassify the Council of the Queensland  
35 Institute of Medical Research as a public sector employer for the purposes of transferring the entity out of the Commonwealth industrial relations jurisdiction and into the Queensland industrial relations jurisdiction.

It's well established that, since the instructions of a previous Federal Government's Workplace Relations Amendment (Work Choices) Act 2005, the Council of the  
40 Queensland Medical Institute of Research has operated in the federal industrial relations jurisdiction. There's no question that the Council of QIMR is a constitutional corporation, by virtue of the Council of QIMR being a body corporate and participating in trading activities which generate a significant amount of revenue  
45 for the corporation. That classification of the Council of QIMR as a constitutional corporation places the entity in the federal industrial relations jurisdiction in 2006, by

virtue of section 51(xx) of the Australian Constitution and the previous Federal Government's Workplace Relations Amendment (Work Choices) Act 2005.

5 Now, whilst the introduction of the Fair Work Act 2009 enables statutory bodies, such as the Council of QIMR, to be declared as no longer covered by the national workplace relations system, no such declaration was made. On 19 November 2009, the Queensland Government's Fair Work (Commonwealth Powers) and Other Provisions Act 2009 took effect, so this legislation [indistinct] refer the industrial relations coverage of the Council of QIMR and its employees to the federal industrial relations jurisdiction. And this effectively has meant that, since 2006, the Council of QIMR and its employees have been continually operating in the federal industrial relations jurisdiction, and the Queensland Institute of Medical Research Award dated 2003 has been of no effect or utility since that point in time.

15 Now, with the exception of a number of contracted staff, QIMR Council employees have, since 2006, been covered by a federal workplace or enterprise agreement, and such employees are currently covered by the Queensland Institute of Medical Research (QIMR) Enterprise Agreement 2011. The Queensland Government has made no public statements, to my knowledge, indicating any intention to transfer the Council of QIMR and its employees out of the Commonwealth jurisdiction and into the Queensland industrial relations jurisdiction. All employees of the Council of QIMR are currently covered by individual contracts or a federal enterprise agreement. Consequently, the PSC doesn't see any purpose or utility in the QIRC retaining the Queensland Institute of Medical Research Award dated 2003 and, accordingly, the PSC supports the Full Bench's proposal to declare that award obsolete. May it please the Commission.

VICE PRESIDENT LINNANE: Thank you. Mr – you don't want to make – yes, Ms Ralston.

30 MS RALSTON: On the surface, that appears to be a confident statement. I'd just draw to the Commission's attention that, of course, Queensland Rail was also subject to similar processes in operating in the federal jurisdiction, and it has returned to the - - -

35 VICE PRESIDENT LINNANE: I think Queensland Rail was talked about for a while beforehand - - -

MS RALSTON: Yes. Yes. So - - -

40 VICE PRESIDENT LINNANE: - - - that it was going. It took a – in actual fact, took a long time to go.

MS RALSTON: Yes. But it - - -

45 VICE PRESIDENT LINNANE: Have you heard some comments about QIMR, have you, around the ridges?

MS RALSTON: Well, we hear comments in many areas.

VICE PRESIDENT LINNANE: Okay.

5 MS RALSTON: You know, some we act to. You'll be aware of that. We're down here often. Others we don't. I mean, on the surface, what the PSC is asserting appears to be adequate in regards to the issues that we - - -

10 VICE PRESIDENT LINNANE: That they have no intentions or know of no knowledge at the present time?

MS RALSTON: That's right. At this stage. That's right.

15 VICE PRESIDENT LINNANE: Yes. That can always change, of course.

MS RALSTON: That's right.

VICE PRESIDENT LINNANE: We understand that.

20 MS RALSTON: That's right. But for the purposes of questioning – of moving to the next stage, which would be to substantiate before this Full Bench the reasonings why the QIMR Award 2003 should be retained, it may be that a similar course of action to that which was advanced in A - - -

25 VICE PRESIDENT LINNANE: AR/3.

MS RALSTON: Yes.

30 VICE PRESIDENT LINNANE: Some qualification in - - -

MS RALSTON: Could be applied here.

VICE PRESIDENT LINNANE: Okay.

35 MS RALSTON: And if the bench is receptive to that, then we're happy to proceed on that basis.

40 VICE PRESIDENT LINNANE: So some qualification in the decision that if it was to come back - - -

MS RALSTON: Yes.

VICE PRESIDENT LINNANE: - - - that that's the appropriate award - - -

45 MS RALSTON: Appropriate instrument.

VICE PRESIDENT LINNANE: - - - to form a basis of any future award, together with the award in the Fair Work Australia.

5 MR WALLACE: For the Full Bench's information, just from PSCs perspective, if that was to occur, and say an entity was to come back, we'd just like to have it as an open discussion where we can figure out what the appropriate award to establish at that point in time would be.

10 VICE PRESIDENT LINNANE: Yes. Yeah. Well, the appropriate award, I think, probably would take into account what's existing. Now, Fair Work Australia would also deal with anything that's in that award - - -

MR WALLACE: Yep.

15 VICE PRESIDENT LINNANE: - - - now – in the existing state award and it'll be a new award of the state, probably, if that was the case, so okay. We'll take that on board, then. Commissioner Fisher can read the transcript of it at this particular point in time. So on that basis, we'll adjourn AR/6, and we'll have to make the other one AR/7 [indistinct] or whatever.

20 MS RALSTON: Yes. That one will take longer.

25 VICE PRESIDENT LINNANE: Oh, I know. I know. It was something in excess of what I thought it was going to be today, but anyway, we'll adjourn. We won't make – we won't make any determination on AR/4 at this stage, given what's happened. And we'll – it may be that we make that still AR/4, but expand it so that – we'll think about how we do that in the coming days. So I'll adjourn. Thank you very much.

30 **THE COMMISSION ADJOURNED**

**[10.40 am]**

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