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QUEENSLAND INDUSTRIAL

RELATIONS COMMISSION

BLOOMFIELD DP

THOMPSON C

BLACK C

No B/2018/12

INDUSTRIAL RELATIONS ACT 2016

S458 – APPLICATION FOR GENERAL RULING

APPLICATION FILED BY QUEENSLAND COUNCIL OF UNIONS

No B/2018/17

INDUSTRIAL RELATIONS ACT 2016

S458 – APPLICATION FOR GENERAL RULING

**APPLICATION FILED BY THE AUSTRALIAN WORKERS' UNION OF
EMPLOYEES, QUEENSLAND**

BRISBANE

11.05 AM, FRIDAY, 27 APRIL 2018

DAY 1

MENTION

**RELEASED TO
PUBLIC AND
PARTIES**

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Date: 27 April 2018

Attachments - NO

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DEPUTY PRESIDENT BLOOMFIELD: Yes. Please be seated. Get the Associate to call the matter.

5 ASSOCIATE: The Queensland Industrial Relations Commission [indistinct] matters B12 and B17 of 2018 [indistinct]

DEPUTY PRESIDENT BLOOMFIELD: Thank you. We'll take appearances, starting with Dr Martin.

10 DR J. MARTIN: If it please the Commission, I appear for the Queensland Council of Unions.

DEPUTY PRESIDENT BLOOMFIELD: Martin J. Thank you. Mr Watson.

15 MR B. WATSON: May it please the Commission, Watson, initial B. I appear for the Australian Workers' Union of Employees Queensland.

DEPUTY PRESIDENT BLOOMFIELD: Thank you.

20 MR T. BRAUNS: My name is Brauns, initial T. I appear for the State of Queensland.

DEPUTY PRESIDENT BLOOMFIELD: Thank you very much.

25 MR A. GOODE: My name is Goode, G-o-o-d-e, initial A, appearing for the Local Government Association of Queensland.

30 DEPUTY PRESIDENT BLOOMFIELD: Thank you, Mr Goodes. I understand, Mr Goode, that the registry didn't serve the directions order on your organisation. It was only yesterday that one of the Associates, as I understand it, realised that you weren't – or you hadn't been served. So we apologise for that and thank you for coming at short notice.

35 The matter is listed for directions. In terms of the availability of members of the bench, because of other commitments and because of the [indistinct] of one of the members, which in a peak period. We only have two dates available, being the 6th of July and the 13th of August. In order to preserve the operative date of September and give us time to put out the decision, we thought that we should come back to the 6th of July date. Prepared draft orders which I'll ask one of the Associates just to hand
40 out just setting out dates it's proposed to have people lodge submissions and reply submissions. I'll just let you have a look at that for a second.

45 Now, you'll note that the first direction requires the applicants, being QCU and AWU, to put submissions in by Friday, 25 May 2018. That's four weeks from today. That direction is issued in the expectation that the Fair Work Commission will have handed its decision down by that date. If events turn out otherwise and the decision hasn't come down or hasn't been forecast to come down in that week. And it might

be that we need to move the date back a week and make adjustments down the track and – but still to preserve the 6th of July date. But is it – well, are those dates convenient for the parties to work to subject to what I just said about the Fair Work Commission, Mr Martin?

5

DR MARTIN: Yes. I think so, your Honour. I – the – that would be the only complicating factor, I would think, is whether or not the result of the National [indistinct] is at hand, but - - -

10 DEPUTY PRESIDENT BLOOMFIELD: It won't - - -

DR MARTIN: - - - most of the - - -

15 DEPUTY PRESIDENT BLOOMFIELD: [indistinct] affect your submissions though, will it?

DR MARTIN: Yeah. Most of the submission would be written regardless of the outcome in any case.

20 DEPUTY PRESIDENT BLOOMFIELD: Yes [indistinct] fine tuning of it.

DR MARTIN: If it pleases.

DEPUTY PRESIDENT BLOOMFIELD: Mr Watson?

25

MR WATSON: We have no problem with that timeframe.

DEPUTY PRESIDENT BLOOMFIELD: Thank you. The State Government.

30 MR BRAUNS: I think one of the difficulties might be that the State budget is set down for the 12th to the 15th of June. We would've liked the advantage of having that prior to making our submissions. We might also find some difficulty in finalising our submissions by that time, but of course if that's the order, we'll work towards that. But that is the only other obstacle that we would see as – is as you
35 identified, the – whether the federal annual wage review decision has been released by that time.

40 DEPUTY PRESIDENT BLOOMFIELD: Thank you. I'll come back to you in a second, Mr Brauns. Mr Goode.

MR GOODE: Yep. We're more than happy with those [indistinct]

45 DEPUTY PRESIDENT BLOOMFIELD: So Mr Brauns, is it possible that, given the caveat that you've posted on things, the State Government could put in the bulk of its submission on the 8th. And if it's necessary to put in some supplementary submission as a result of the State budget, that could be done in time to allow the unions at least and potentially the Local Government Association to respond. That

might require some adjustment to the date in direction 3 and the date in direction 4. Not by much, but by a few days each way.

MR GOODE: Yes. If that could be accommodated.

5

DEPUTY PRESIDENT BLOOMFIELD: All right. Now, the bulk of the people in the room would recognise that I was a member of last year's bench and there are a couple of things that, in my capacity as a member of last year's bench, I want to highlight to the parties. And in doing so, I indicate that [indistinct] respect for myself because the other members of the bench obviously are not constrained by prior decisions of earlier or – strike that. Start again. They're not constrained by the decision or the wording of the Full Bench decision of last year, but I would be expecting, for my part, the parties to be aware of and to address certain matters in that decision. And if I could ask one of the Associates to hand around pages 15, 16 and [indistinct] 18 and 19 – 19 and 20 of last year's decision.

So at page – just while they're being distributed, I'll just highlight – on page 15, if you could just – and note the content of paragraphs 48 through to 51 inclusive. And in the other document, if you could note the content of 67 and 69. And I'll just give everyone just a couple of minutes to refresh their minds if they've read it before or to read it afresh. So just to – to summarise what's in the parts of the decision that I've handed down, last year there was some questioning as to the relevance of a lot of the economic and other statistical data which was provided by the parties in [indistinct] particularly in circumstances where the clientele of the Queensland Industrial Relations Commission is now Queensland Public Sector, Queensland Local Government and Parents and Citizens Associations where there are somewhere between 300,000 and 350,000 employees. Given that clientele, it appeared last year's full bench and still appears to me, speaking personally data concerning business investment, [indistinct] investment, changes in tourism levels and the like have little relevance to conditions in the three sectors with which we're concerned. Paragraph 51 there is the identification of some matters which might be more relevant to any consideration of an application such as this by the Commission.

In the other part of the decision that was handed down – or handed out, rather, paragraph 67 and 68 identify some of the matters which were subject of discussion between the four bench members and advocates who appeared on that occasion and give rise to the questions which are set out in paragraph 69 in that the 2016 Industrial Relations Act places different requirements on the Commission than the 1999 Act and some of the things which became apparent during the course of last year's hearing is that there is a group of minimum rates awards which still exist in the Queensland Jurisdiction and there's still other awards which are not described as minimum rates awards. They being the awards primarily applying in the public sector where increases that were put into certified agreements have found their way into awards because of the impact of section 129 of the 1999 Act between April 2005 and November 2013 at which time it was [indistinct] former government.

5 So there are still those questions which exist and, for my part, I was hoping the parties would address them during the course of their submissions. I suspect that they might be the subject of some questioning and debate of, at least, myself during the course of the hearing and I don't wish to seek at this stage the views of my colleagues on that because it's – it's too earlier and their views might differ from mine but for my part, at least, I'd be looking to have those matters addressed in submissions. Now, I'll ask, firstly, are there any questions that might exist on the floor, as it were, before I ask my colleagues whether they've got any questions they want to ask of the parties [indistinct] application.

10

DR MARTIN: No, your Honour. Not from the QC.

DEPUTY PRESIDENT BLOOMFIELD: Mr Watson?

15 MR WATSON: In view of the matters that the Commission is wanting submissions on from the parties, or asking us to consider, I'm not sure that the timeframes that have been proposed will – will be capable of being met from our end.

DEPUTY PRESIDENT BLOOMFIELD: Yes.

20

MR WATSON: I mean, that's a significant – we're being asked to significantly change the – the way the wage – the State wage case has been heard in – in the past. I'm just thinking, four weeks to deal with that from today is – it might – might cause problems. I – I'm not saying I want the dates changed. I'm just flagging, that might be an issue that I will experience over the next four weeks.

25

MR BRAUNS: Thank you, Deputy President. We've recently perused the decision from last year and thank you for identifying those matters in that decision. We are aware of those and we'll seek instructions in relation to submissions to make on those and endeavour to do that within the time frames that we have. I don't have anything else to add.

30

DEPUTY PRESIDENT BLOOMFIELD: Thank you.

35 MR GOODE: We have no problems with the requirements.

COMMISSIONER THOMPSON: Well, on this matter Deputy President Bloomfield has put views that he holds. I – I don't, at this point, indicate that I hold the same views. So – but I do take on notice the – the additional work that would be required and as Mr Watson has – has submitted it [indistinct] that I think – if it has the potential to – to make it impossible for Mr Watson or others to meet the – the time frames then there ought to be something in place whereby we make some allowances for that and that might mean an alternation to the date. I – I'm not constrained by the decision from last year. That's the point I'm making.

45

COMMISSIONER BLACK: All I'm can say is that I acknowledge that – to the extent that the Act has changed, there may be issues arising from the expression of

the '16 Act compared to the '99 Act that could impact on the decision making associated with the State wage matter. I haven't turned my mind to the questions raised yet. I would simply observe in terms of the economic data that for the – the State – the State's finances or the State's capacity to pay would be influenced by the overall economic performance, I would have thought. In other words, if – if there is a booming economy, payroll, tax receipts would be higher. A range of other State Government revenue streams, presumably, would be enhanced and that might have an impact on the state as an employer to – in so far as how it – how it deals with a proposal to increase public sector wages. So I'm not – I'm not convinced that the – any discussion about the economy can – can be one which separates out the overall performance of the Queensland economy from the notion of a capacity to pay or the revenue performance of the state government but these are matters, I think, that if the parties make submissions on, we can evaluate as they – as they're presented.

DR MARTIN: If I might be heard just with respect to the – the point made by Commissioner Black. I would suggest – the way in which I'd interpreted last year's decision, which I would add, now that I am on my feet, was – has been the subject of considerable discussion between the QCU and its affiliates so as that our submissions will be – you know, will hopefully provide clarity as to what our position is, at least. But I'd read paragraph 51 as fairly much saying that – and – and I quote:

Movements in average weekly [indistinct] earnings in both the private sectors and the like are clearly relevant. What [indistinct] more information for our consideration of the claim.

So I – the – the submission I had anticipated would have looked somewhat similar to previous submissions but would have had those additional – those additional matters that had been requested in last year's decision, in addition to that statistical data. I would add that when I started, I think the – the QCU – I think the submission was in the order of 80 pages for a ten-page decision which seemed like an inordinate amount of information being provided to the – to the Commission having regard to the changed jurisdiction. So - - -

COMMISSIONER BLACK: Well, in a context where the traditional practice has been to act consistent with the federal tribunal decision.

DR MARTIN: That's – that's correct, Commissioner.

COMMISSIONER BLACK: So there should be a level of pragmatism - - -

DR MARTIN: Yes. Yes, perhaps. Yes, if the Commission pleases.

DEPUTY PRESIDENT BLOOMFIELD: Could we leave the – could we act on it in this way: could we leave the current directions in place and if we note that – if anyone feels that they're getting into trouble and needs and extension, they should immediately act on that rather than wait until, for example, the 24th of May to say, "Can we have an extension?". Then we can start to accommodate things. We've

5 already discussed the situation of the State budget coming down and perhaps the need for a supplementary submission and LGAQ might need to file a supplementary submission. And in terms of the applicant's final responses, as long as we've got them a couple of days before we actually sit then there's a few days flex there but not a lot. So we can adjust them but it's just a question of how much flex there is in the adjustment [indistinct] because the 6th is really the day that we need to work towards. Simply because the diary's such that we can't get together again until the 13th of August.

10 MR BRAUNS: Deputy President, if I may, do you intend on holding the 13th in case the timeframes do – cannot – can't be met for that sixth hearing date as well?

15 DEPUTY PRESIDENT BLOOMFIELD: Maybe it's worthwhile to do that. But the clear preference would be for the 7th so that we're not left with – just a couple of weeks to discuss the decision amongst ourselves and then – and then for it to be written and released. But, yes, we'll – we'll take the precaution of blocking that time out and we'll ask the Associates to do that when we arrive. If you could, perhaps, also take the precaution of putting it in – in white pencil. Won't take much erasing then. Nothing else we need to touch on today? Okay. Thank you. The Commission
20 can be adjourned.

THE COMMISSION ADJOURNED

[11.29 am]