QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 287 - application for declaration of a general ruling

s. 288 - application for declaration of policy

Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B777 of 2003)

AND

The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B784 of 2003)

VICE PRESIDENT LINNANE
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER FISHER 1 August 2003

DECISION

On 6 May, 2003 a Full Bench of the Australian Industrial Relations Commission (AIRC) released its decision in the matter of the *Safety Net Review - Wages May 2003* (AIRC PR 002003: 6/5/2002 Giudice J, Ross VP, Lawler VP, Watson SDP, Lacy SDP, Hoffman C and Larkin C). By that decision the Full Bench of the AIRC:

- awarded a safety net adjustment of $17 per week increase in award rates up to and including $731.80 per week and a $15 per week increase in award rates above $731.80 per week;
- stated that the safety net adjustment was capable of absorption into overaward payments;
- awarded an increase in the federal minimum wage of $17 per week; and
- increased allowances that relate to work and service increments.

On 8 May, 2003 the Queensland Council of Unions (QCU) filed with the Industrial Registry an application (B777 of 2003) which seeks:

- to apply the same level of arbitrated wage adjustment determined by the Full Bench of the AIRC in the *Safety Net Review - Wages May 2003* into all State awards by way of general ruling;
- an adjustment of 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* i.e. an increase of 3.2%; and
- to apply the arbitrated wage adjustment of $17 per week to the Queensland Minimum Wage as it applies to both award and non-award employees consistent with the outcomes provided for in *Gordon Nuttall, Minister for Industrial Relations v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (Queensland Minimum Wage Case)* (2003) 172 QGIG 2 and (2003) 172 QGIG 1366;
- the maintenance of the 2002 Declaration of Policy dealing with the *Statement of Principles* (2003) 170 QGIG 438 except for changes in operative dates, the quantum of wage adjustment and consequential amendments to ensure the currency of the Principles; and
- an operative date of 1 September, 2003.

On the same day The Australian Workers' Union of Employees, Queensland (AWU) filed a similar application (B784 of 2003). At the time of hearing the AWU pursued only those parts of its application which were consistent with the QCU application.

Both the QCU and the AWU sought to have both applications joined. There was no opposition to that application and both applications were joined.

On 9 July, 2003 we published a Declaration of Intent to satisfy the duty placed upon the Commission by s. 287(3) of the *Industrial Relations Act 1999*. The *Declaration of Intent* is now reported at (2003) 173 QGIG 974.

Since the decision of the AIRC the following tribunals have granted similar applications to that before this Full Bench:

- the New South Wages Industrial Relations Commission on 27 May 2003: see *State Wage Case* [2003] NSWIRComm 174;
- the Western Australian Industrial Relations Commission on 5 June 2003: see 2003 WAIRC 08452;
- the South Australian Industrial Commission on 2 July 2003: see *State Wage Case* (2003) SAIRComm 40; and
- the Tasmanian Industrial Commission on 10 July 2003.

The State of Queensland supported the QCU and AWU applications. That support was based on an assessment of a number of factors including the decision of the AIRC and the findings made by the AIRC in arriving at that decision, the strength of the Queensland economy, the needs of the low paid and those who remain reliant on awards and/or the Queensland Minimum Wage for their rate of pay and the provisions of the *Industrial Relations Act 1999*. The State of Queensland was also concerned to maintain parity between the wage increases received by state and federal award employees and to ensure that there was no disadvantage for employees on award rates of pay in the Queensland jurisdiction. We have had regard to the economic data provided by the State of Queensland on the Queensland economy.

The Australian Industry Group, Industrial Organisation of Employers (Queensland) (AIG) did not oppose the applications submitting that a uniformity of safety net adjustments across the Queensland and federal jurisdictions was appropriate. The AIG in the *Safety Net Review - Wages May 2003* made submissions to the effect that it would be worthwhile for the AIRC to conduct its own comprehensive independent survey to inform itself of the impact of its Safety Net Review decisions. In response to that submission the AIRC in its decision made the following comment:

> "We see value in a comprehensive, representative and technically robust survey directed to providing direct and contemporary information relevant to the Commission's task in adjusting the wages safety net ... Accordingly we urge the parties and in particular the Commonwealth to give consideration to facilitating survey research of the nature suggested by AiG.". (para 176, PR002003)

The AIG submitted that the Queensland Industrial Relations Commission should also endorse this approach.

The Local Government Association of Queensland Inc (LGA) supported the QCU and AWU applications.

The Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) opposed the following aspects of the claim:

- the granting of the $17/$15 increase in award rates of pay;
- the granting of the $17 per week increase in the Queensland Minimum Wage; and
- the 3.2% increase in work related allowances and increments.

Instead the QCCI proposed an increase of $12 per week in award rates of pay and in the Queensland Minimum Wage and an increase of 2.5% for work related allowances and service increments. The QCCI did not object to the operative date of 1 September 2003 for the increases in award rates of pay and work related allowances but objected to that operative date for any increase to the Queensland Minimum Wage. Instead the QCCI proposed an operative date of the beginning of the first pay period commencing after 1 April 2004 for any increase to the Queensland Minimum Wage. The QCCI submitted that the AIRC, at the time of making its decision, relied upon economic data that was focused nationally rather than on a State by State basis. In its submission the QCCI asked the Full Bench to consider a number of factors which QCCI submitted supported a conclusion that some aspects of the Queensland economy are not as strong as they are nationally. These include:

- the international environment which included the adverse effects on tourism of the SARS virus;
- the drought which has resulted in a sharp overall fall in agricultural production in Queensland; and

- the prediction of a decrease in the Queensland tourism sector resulting from the war in IRAQ and the SARS virus.

The position adopted by the QCCI was supported by the Queensland Fruit and Vegetable Growers (QFVG). The QFVG submitted that the drought conditions across Queensland have been unusually widespread, severe and extended and that for the horticulture industry the drought is "a once in a 100 year event". The QFVG also contend that the effect of the decision in the *Queensland Minimum Wage Case* has meant that the minimum adult weekly wage in the *Fruit and Vegetable Growing Industry Award - State* has increased substantially in recent months.

The Retailers' Association of Queensland Limited, Industrial Union of Employers (RAQ) opposed the applications and submitted that the Full Bench have regard to the following factors:

- the importance of the retail sector to the health of the overall Queensland economy;

- that in 2002 unprecedented labour cost increases were imposed on retailers e.g. a safety net increase of $18, a 1% increase in compulsory superannuation contributions and a 1% increase in the casual loading;

- additional costs arising from annual lease reviews in the retail sector; and

- competition in the retail sector means that the costs associated with any safety net increase have to be absorbed by the retailer.

The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers (RCEA) opposed the QCU and AWU applications. In so doing the RCEA submitted that the economic risks to the hospitality industry, particularly that of the SARS virus, have increased since the AIRC decision. The RCEA referred the Full Bench to submissions made by the organisation to Queensland Treasury in response to the National Competition Policy Review of Queensland Gambling Legislation and to the Inquiry into the Workplace Relations Act Amendment (Protecting the Low Paid) Bill 2003.

The written submission of the Queensland Cane Growers' Association, Union of Employers (QCGA) indicated that the QCGA opposed the QCU and AWU applications. In addition the written submission stated that the QCGA seeks relief under s. 287(5) of the Act and "requests the Commission to exclude the *Sugar Industry Award - State, Division 2 - Field Sector* from the operation of the 2003 State Wage Case decision". When questioned as to whether the QCGA were making an application for exclusion from the effect of any general ruling it was stated that the cane growers "have not made an application for an industry-wide exemption" but appeared to reserve the right of individual growers to make application once any general ruling was determined. Generally the QCGA submitted that the low sugar price forecast for the 2003 season meant that it would be inappropriate to grant the QCU and AWU applications. It was contended that four successive poor crops combined with a steep fall in world sugar prices have undermined the economic viability of the cane growing industry. The QCGA advised of an assistance package that has been promised to the industry, however it was further advised that the reform agenda on which the package is based had not yet commenced.

On the basis of the oral submission of QCGA that it was not pursuing an application under s. 287(5) of the Act the AWU did not respond to any such application. If the QCGA did mean to apply under s. 287(5) we would not have granted such an application for many of the same reasons (particularly lack of any evidence) that we have rejected a similar application by the Queensland Mechanical Cane Harvesters Association, Union of Employers (QMCHA).

The QMCHA opposed both applications and made application under s. 287(5) of the *Industrial Relations Act 1999* for exclusion from the operation of any general ruling the Full Bench may make. That application is the subject of a separate decision.

The submission of the Queensland Motel Employers' Association, Industrial Organisation of Employers (QMEA) was to leave the matter of the determination of the QCU and AWU applications to the Full Bench. In so doing the QMEA provided the Full Bench with information on the tourism industry in Queensland. In particular we were referred to the Tourism Crisis Management Plan of April 2003 developed by the Department of Tourism, Racing and Fair Trading and the Tourism Support Package of June, 2003. The QMEA took issue with a QCU submission that general rulings apply to industrial instruments. The QMEA submits that notwithstanding the definition of "industrial instrument" in the *Industrial Relations Act 1999*, s. 713(3) of the Act precludes the Commission from amending an industrial agreement after its term has expired. The term of all industrial agreements has now expired. On this point the QCU did concede that any increase resulting from a determination of the QCU and AWU applications would not apply to industrial agreements. We concur with that view.

The AIRC in considering the economic data before it stated:

> "The Australian economy has continued to grow strongly over the course of 2002. The non-farm economy has maintained growth in the order of 4 percent per annum, whilst the level of growth in total has eased to 3.2 percent in

the year to the December quarter 2002, reflecting the significant fall in farm activity in the last half of 2002 as a result of the drought conditions. Private sector business investment growth has been very strong, with dwellings investment remaining strong, although easing, throughout the course of 2002. The continued healthy growth has been reflected in reasonably strong labour market outcomes, with both full-time and part-time employment growing and unemployment falling in 2002 and into 2003. Inflation and wages growth remain moderate. Significant productivity growth had been recorded. Profits measured by gross operating surplus grew and profit share of GDP remains at historically high levels.". (para 67, PR002003)

The AIRC however also had regard to the risks identified by various parties to the proceeding such as the effects of the drought, a possible weakening of the world economy and the uncertainty resulting from the war in IRAQ. In considering those risks the Full Bench noted:

"Whilst we are conscious of these risks and have regard to them in determining the ACTU's claim, it is not appropriate to assume that the risks will materialise for several reasons.

Firstly, the risks identified have been incorporated to some degree into the formulation of MYEFO forecasts. For example, the MYEFO commentary contrasts the solid growth prospects for Australia, reflected in the forecasts, with 'the weak and uncertain outlook for the global economy'. The commentary notes that the main domestic risks to Australia's economic outlook - the drought and the prospect of a downturn in the housing cycle - 'by themselves are unlikely to significantly derail the broader economy'. The possibility of a further deterioration in the global economy, whilst bringing risks, is thought to be 'not the most likely outcome.'

...

Secondly, the underlying strength of the Australian economy has placed it in a strong position to cope well with risks and shocks. This has been evident in the past with the rapid return to the path of strong, non-inflationary growth following the transitional effects of the introduction of the GST in 2000, and the capacity of the Australian economy to deal with the economic crisis in East Asia in 1997 and the associated financial instability.

...

Thirdly, we do not believe that the low paid should carry the full burden of the uncertainties. We think the correct approach, adopted in the formulation of official forecasts, is to be conscious of risks but not to assume the realisation of the worst case.

...

In our view it is appropriate to have regard to the present uncertainties and risks which might affect the Australian economy. We think it inappropriate, in assessing the capacity to better address the needs of the low paid, to assess economic uncertainties and risks on the basis of a worst case outcome. Nonetheless, we accept the need to have regard to those risks and uncertainties, within the context of a broader range of considerations, when determining the present claim and we have done so.". (paras 93-97, PR 002003)

The AIRC cited generally favourable economic conditions and found no discernible adverse aggregate economic impact resulting from the 2002 safety net increase and concluded that the "Australian economy can accommodate further reasonable improvements in the safety net of minimum wages of the level" determined in the decision. As the State of Queensland submitted the "Queensland economy has remained resilient in 2002-03, in the face of ongoing weakness and uncertainty in the global economic environment". The increase sought in the applications is, in our view, an affordable increase to aggregate wages growth and one which the economy can sustain in light of the generally favourable economic conditions and the outlook in Queensland, as demonstrated by the key economic indicators.

Almost one quarter of Queensland employees rely on the award system to provide wage increases and there continues to be a wage disparity between this group of workers and those who benefit from individual and collective bargaining. It is important that such workers are not unduly disadvantaged because of an inability to negotiate wage increases with their employers.

There appears to be no compelling social reasons for denying Queensland's lower paid workers the same benefits to be enjoyed by other Australian workers. The flow-on of the *Safety Net Review - Wages May 2003* increase will maintain consistency between the Queensland and federal award systems and ensure that employees who rely on Queensland state awards are not disadvantaged.

Having considered the submissions of all parties, we are of the view that the applications in so far as they relate to arbitrated wage adjustments, the adjustment of allowances that relate to work and service increments and the *Statement of Principles* should be granted. We have also considered the AIG submission on the need for survey research. We have decided to await the outcome of the AIRC's urging of the parties in the *Safety Net Review - Wages May 2003*

matter to give consideration to facilitating such survey research. It may be that such research, if it occurs, will provide the necessary data on the Queensland position. We are thus of the view that it is somewhat premature for this Commission to be urging parties to consider separate survey research.

Amendments to the *Industrial Relations Act 1999* in 2002 oblige the Commission to ensure a general ruling about a Queensland Minimum Wage for all employees is made at least once each calendar year: see s. 287(1)(c) and (2) of the Act.

In previous State Wage Case applications, the adjustment and then subsequent operation of the Queensland Minimum Wage has been dealt with through a Statement of Policy, limited to award employees. Since the decision in the *Queensland Minimum Wage Case* the operation of the Queensland Minimum Wage has substantially altered. That decision was released on 18 December 2002 with an operative date of the beginning of the first pay period after 1 April 2003. One reason for the delay in the operative date was to give parties interested in preserving an award exclusion an opportunity to make application for exemption from the proposed general ruling and to have the matter brought before the Commission before the general ruling would have overridden the exclusion. The Full Bench in the *Queensland Minimum Wage Case* did however state that the "anticipation is that once the teething problems are dealt with, General Rulings about a minimum wage will issue at the same time as State Wage decisions".

Whilst we acknowledge there was an increase in the Queensland Minimum Wage effective as and from the first pay period commencing after 1 April 2003 and that the QCU and AWU applications seek a further increase as and from 1 September 2003 it seems to us appropriate to bring the adjustment of the Queensland Minimum Wage into line with the State Wage Case general ruling at this time.

We therefore grant the applications as they relate to the Queensland Minimum Wage from 1 September 2003.

Dated 1 August 2003.

D.M. LINNANE, Vice President.

A.L. BLOOMFIELD, Deputy President.

G.K. FISHER, Commissioner.

Appearances:

Ms D. Ralston for the Queensland Council of Unions.

Mr C. Simpson for The Australian Workers' Union of Employees, Queensland

Mr T. Shipstone for the State of Queensland

Ms S. Lindsay for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers

and for the Queensland Fruit and Vegetable Growers

Ms L. Vanderstope for the Australian Industry Group, Industrial Organisation of Employers (Queensland)

Mr B. Petley for the Retailers' Association of Queensland Limited, Union of Employers

Mr K. Law for The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers

Ms R. Laun and Mr B. Siebenhausen for the Queensland Motel Employers Association, Industrial Organisation of Employers

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

Mr J. Powell for the Queensland Mechanical Cane Harvesters Association, Union of Employers

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

Ms S. Richards for the Queensland Hotels Association, Union of Employers

Ms S. Dwane for the Queensland Master Hairdressers' Industrial Union of Employers

Mr B. Cox for The Hairdressing Federation of Queensland - Union of Employers

Hearing Details:

2003 30 May

19 June Released: 1 August 2003

4 and 11 July