

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 288 – statement of policy

The Australian Workers' Union of Employees, Queensland and Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (B210 of 1998)

PRESIDENT HALL
COMMISSIONER BLOOMFIELD
COMMISSIONER BECHLY

8 September 1999

Public Holiday Falling on Weekend – Substitution of Weekday – Need to Protect Non Monday to Friday Workers – Decision of AIRC – Statement of Policy Issued.

DECISION

By s. 2(1) of the *Holidays Act 1983* a public holiday is to be observed in respect of each of the ten days set out in the schedule. The schedule is as follows:–

“SCHEDULE

Part 1

Good Friday
The day after Good Friday (Easter Saturday)
Easter Monday
The Second Monday in June (Birthday of the Sovereign)

Part 2

1 January (New Year's Day)
25 April (ANZAC Day)
25 December (Christmas Day)
26 December (Boxing Day)

Part 3

1 May (Labour Day)

Part 4

26 January (Australia Day).”.

By s. 2(2) when any of the days set out in Part 2 of the schedule falls on a Sunday, or the day set out in Part 3 falls on a day other than a Monday, or the day set out in Part 4 falls on either a Saturday or a Sunday, the following Monday is to be substituted as the Public Holiday. Pursuant to s. 2(1) the substituted day is to be observed as the Public Holiday. By s. 2(3) when 26 December falls on a Monday, the next day is to be substituted as the Public Holiday.

By s. (3) the Minister may, by Gazette notice, substitute another day for a Public Holiday under s. 2, As a matter of practicality, what in fact happens at present is as follows –

- When any of the days set out in Part 2 falls on a Sunday, the following Monday is automatically substituted as the Public Holiday.
- When Labour Day as set out in Part 3 falls on a day other than a Monday, the following Monday is automatically substituted as the Public Holiday.
- When Australia Day as set out in Part 4 falls on either a Saturday or a Sunday, the following Monday is substituted as the Public Holiday.

So comprehensive is the extent of the automatic substitution that as a matter of practicality the Minister is ordinarily called upon to exercise the discretion at s. (3) only when one of the days at Part 2 falls on a Saturday.

We are disposed to accept the submission of Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers that public holidays are in their origin days which have religious, cultural, or national significance. However, it seems to us that once substitution occurs, the day on which the Public Holiday is observed partakes of the nature of leave. The difficulty is that the system of substitution, which protects the interests of employees who work Monday to Friday, disadvantages those who work on other patterns, eg those who work Tuesday to Saturday, or who work Monday to Friday but on a nine day fortnight.

On 20 March 1995 a Full Bench of the Australian Industrial Relations Commission published a decision, *The State Public Services Federation and Others; the Clerk of the Legislative Assembly and Others*; Print L9178 establishing a draft clause for use in the variation of Federal Awards to ensure that in protecting the leave of Monday to Friday workers, those working other than normal Monday to Friday hours were not disadvantaged. It was inevitable that an attempt would be made to flow that decision into the Queensland system of Industrial Relations. By an application filed 5 February 1998 (amended 9 March 1999), The Australian Workers' Union of Employees, Queensland sought to do that by way of a Statement of Policy. In consequence of the repeal of the *Workplace Relations Act 1997* and the enactment of the *Industrial Relations Act 1999* the application is now to be dealt with under the latter Act, see s. 710(4). In those circumstances, Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers took the preliminary point that the matter might be dealt with only by way of an application under s. 58. By a decision given on transcript and separately reported, we rejected that submission.

Having heard the parties, we have formed the view that there would be merit in stating a policy upon this matter in order that there should be measure of uniformity in the outcome of applications to vary particular awards. To us, the reasoning in Print L9178 is compelling. Subject to two concessions made on transcript, we consider the draft statement for which The Australian Workers' Union of Employees, Queensland has contended to be eminently suitable. The concessions were that the parties to an award were to be free to develop an alternative scheme provided it was no less advantageous to employees than the system of protection described in the statement, and that where an alternative remedy had already been built into an award, that award was not to be subject to variation under the Statement of Policy even if less advantageous to the employees than the protective scheme envisaged by the Policy. If any claim was made to vary such an Award it would need to be processed as a Special Case. We think that we should impose a further limitation that any particular employer should be permitted to claim exemption and/or phasing in on the basis of incapacity to pay of the type described at paragraph 12 of the existing Wage Principles. The applicant is to prepare a draft Statement of Policy conforming to this decision and to undertakings given to Queensland Hotels Association, Union of Employers and Australian Industry Group, Industrial Organisation of Employers (Queensland) and circulate same to the parties.

Dated this eighth day of September, 1999.

D.R. HALL, President.

A.L. BLOOMFIELD, Commissioner.

R.E. BECHLY, Commissioner.

Appearances:-

Mr B. Swan for The Australian Workers' Union of Employees, Queensland.

Mr J. Sprechley for Queensland Council of Unions.

Ms A. Stubbs for Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.

Mr D. Matley for Hardware Association of Queensland, Union of Employers.

Ms S. Haire for Australian Industry Group, Industrial Organisation of Employers (Queensland).

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

Mr B. Reedman, with him Ms M. Swindells and Mr J. Redsell for Department of Employment, Training and Industrial Relations.

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

Released: 8 September 1999