QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999
s. 274 – general powers
s. 287 – application for declaration of general ruling
s. 288 – application for declaration of policy

Minister for Employment and Workplace Relations AND Queensland Council of Unions and The Australian Workers' Union of Employees, Queensland (B/2006/5)

VICE PRESIDENT LINNANE
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER ASBURY 20 February 2006

Application to adjourn the State Wage Case until after the first determination of the AFPC – QIRC not bound by the same legislative constraints imposed on the AIRC – No legislative support for adjournment – Usual practice of the QIRC to have a decision on the State Wage Case operative from 1 September – Not persuaded that this practice should be departed from – Application dismissed – *Industrial Relations Act 1999,* ss. 274, 287 and 288.

DECISION

[1] This is an application by the federal Minister for Employment and Workplace Relations (the Minister) seeking to have applications B/2005/1197 and B/2005/1198 (state wage case) adjourned until after the Australian Fair Pay Commission (AFPC) has made its first minimum wage determination and the Australian Industrial Relations Commission (AIRC) has made a similar determination in relation to persons described as "transitional employees" under the *Workplace Relations Amendment (Work Choices) Act 2005 (Work Choices Act)*. Application B/2005/1197 is an application by the Queensland Council of Unions (QCU) for, *inter alia,* a general ruling in regard to wage and allowance adjustments for award employees and a general ruling in relation to the Queensland Minimum Wage. B/2005/1198 is an application by The Australian Workers' Union of Employees, Queensland (AWU) for similar relief.

Submission – Minister for Employment and Workplace Relations

[2] The Minister's position is based on the enactment of the *Work Choices Act* which received royal assent on 14 December 2005. It is submitted that the Act has important implications for future minimum wage setting arrangements, particularly for employees of constitutional corporations. The Minister's submission indicates that it is the Australian Government's intention that the changes resulting from the enactment of the *Work Choices Act* will commence on proclamation in March 2006. At this time it is said that this Commission will cease to have jurisdiction with respect to minimum wage setting for employees of constitutional corporations, a role which will be assumed by the AFPC.

[3] It is further submitted that regulations will also be made to ensure that part-heard general pay claims in respect of these employees are treated as having lapsed and that any notion of an accrued right for such claims will be extinguished.

[4] The Minister contends that this Commission should adopt the same course as the Full Bench of the AIRC in its decision in *Application by Transport Workers' Union of Australian and Others* (PR966840, 21 December 2005) when it adjourned a similar application before it.

[5] It is submitted that to proceed with the applications before this Commission at this time could have the effect of "undermining the benefits of what has been a longstanding national approach to minimum wage fixing" which in turn will raise the potential for "inconsistencies and inequities to be created between the minimum wages of employees employed by unincorporated employers in the Queensland jurisdiction … and those applicable to employees within the federal jurisdiction".

[6] The submission is made that:

> "… proceeding with this application could place in jeopardy the jobs of those employees within the QIRC's jurisdiction who are award-reliant, by increasing the cost of employing these workers compared with their counterparts in other jurisdictions. Plainly, a larger increase in award rates than that which may occur federally would place businesses in the QIRC's jurisdiction at a competitive disadvantage to Queensland businesses in the federal jurisdiction.".

[7] That submission presupposes that the AFPC is going to grant a smaller increase in minimum wages than this Commission in circumstances where the membership of AFPC has yet to be announced and no evidence has been heard by this Commission in respect of B/2005/1197 and B/2005/1198. It also presupposes that the AFPC will

grant something less than that which the evidence before an independent tribunal might reveal as an appropriate increase.

[8] Further, it is submitted that to hear B/2005/1197 and B/2005/1198 at this time could create inconsistencies between the minimum rates outcomes determined by this Commission as compared to the outcomes which may be determined in other States and Territories. It is noted that similar applications are currently before the industrial tribunals of New South Wales, Western Australia, South Australia and Tasmania. It is said that if State industrial tribunals abandon the practice of following federal determinations it is highly likely that different outcomes would result.

[9] The Minister further submits that it is in the public interest that this Commission be fully informed about the circumstances of employers within the Queensland jurisdiction following the commencement of the *Work Choices Act*. There is some suggestion that parties who previously have not appeared in Queensland state wage case applications in this Commission might wish to do so as a result of the change to the federal legislation. Why that would be the case was not explored. This Commission has always adopted the practice of publicly announcing the hearings in the Queensland state wage cases and inviting submissions from interested persons. Persons or organisations with an interest in these matters have every opportunity to present their case whether that is in support of the applications or in opposition to them. To suggest, as the Minister seems to, that the employer organisations represented in this application are not capable of adducing evidence before this Commission on the effect of the claim on "unincorporated businesses" does them some injustice.

[10] It seems to be accepted that the AFPC will not make any determination on a national minimum wage before spring 2006, i.e. before 1 September 2006. The Minister is thus asking, in the first instance, this Full Bench to delay the hearing of this application well past what has traditionally been the operative date of any Queensland state wage case, i.e. 1 September in each year. If we were to hear the matter after the AFPC determination and perhaps after the AIRC determination, then it could be 2007 before any decision emanated from this Commission.

[11] It is also submitted by the Minister that the Australian Government has publicly stated that the AFPC is expected to take into account the time since the AIRC's 2005 Safety Net Review decision of 7 June 2005 when making its first determination and that this Commission could do likewise. If the AFPC is an independent body then the expectation of the Australian Government is just that, an "expectation". There is no legislative requirement on the AFPC to take such matters into account.

[12] It is accepted that for the past nine years or so this Commission has followed the AIRC's decisions in respect of the Queensland state wage case. However there is no legislative requirement or Commission policy to this effect. Rather, the QCU and the AWU applications before the Queensland Industrial Relations Commission in those years have sought simply to flow on the increases granted by the AIRC. The applications have been dealt with by hearing the submissions of the various organisations seeking to be heard on the applications. There has been no, or very little, evidentiary material placed before the respective Full Benches in recent years.

[13] The response during those nine years to the QCU and AWU applications (to flow on the AIRC decisions) by the various employer organisations is reflected in Schedule 1 to this decision. The only organisation supporting the Minister's application that has consistently consented to the QCU and AWU applications to flow on the AIRC decisions is the Australian Industry Group, Industrial Organisation of Employers (Queensland).

[14] It is accepted that throughout that nine years various Full Benches have commented that consistency and uniformity of minimum wage outcomes is desirable. Those comments have been made in circumstances where an independent tribunal, the AIRC, heard evidence from all parties and made a determination on the evidence before it. The AFPC is a newly established body where the membership of it has yet to be announced except for the Chairman, Professor Ian Harper. No processes have been established as to how the AFPC will determine the federal minimum wage. It is also not known whether organisations such as those appearing before this Commission will have an opportunity to be heard in relation to the federal minimum wage. At this time the AFPC can not be compared to the AIRC.

[15] Alternatively, the Minister submits that this Commission hear the matter pursuant to the proposed timeframes but await the determination of the matter until the Full Bench has had an opportunity to consider the AFPC determination.

Submissions – Organisations supporting the Minister's application

[16] The Minister's application is supported by the following organisations:

- **Australian Industry Group, Industrial Organisation of Employers (Queensland) (AIG)** – the AIG submit that this Commission should adopt the position taken by the AIRC in December 2005 and adjourn this proceeding until after the AFPC has made its first wage determination. This, it is said, would ensure compliance with the principal object of the *Industrial Relations Act 1999* which is to provide a framework for industrial relations that supports economic prosperity and social justice. AIG submit that to do otherwise would create inequities and inconsistencies between the minimum wages of employees employed by non-constitutional corporations or bodies and constitutional corporations who will have their minimum wage outcomes determined by the AFPC. In particular, the AIG drew our attention to s. 3(a), (b), (f) and (g) of the objects of the *Industrial Relations Act 1999* in submitting that the QCU and AWU applications should be adjourned.

- **Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI)** – the QCCI adopted and supported the submissions of the Minister in their entirety. The QCCI encouraged us to adopt the position taken by the AIRC and adjourn the proceedings until the outcome of the AFPC's deliberations were known. The QCCI also pointed to the practice in this Commission of flowing on past minimum wage decisions of the AIRC. The QCCI does not raise the fact that traditionally they have not supported the QCU and AWU applications to flow on the AIRC decisions but rather have sought a smaller increase in the Queensland jurisdiction. The QCCI also raised the issue of the potential for inconsistent outcomes in the various jurisdictions.

- **National Retail Association Limited Union of Employers (NRA)** – the NRA supported the Minister's application and in so doing submitted that the QCU and AWU applications were "essentially political in character" as they sought to "pre-determine and discredit the constitution and decision making processes of the AFPC". We do not accept this proposition. Consistently, Queensland workers have received the benefits of state wage cases on 1 September in each calendar year. It has been known for some time that the Australian Government was not looking for the AFPC to deliver any adjustment to the national minimum wage before spring 2006. In our view, the QCU and AWU are entitled to pursue these applications for increases to the Queensland Minimum Wage and other award wages prior to any determination of the AFPC. The NRA also submitted that it is important that "unincorporated employers remaining in the state jurisdiction not be disadvantaged in terms of general wage movements". This again suggests that the AFPC is not going to grant the type of increases in minimum wages that the various State tribunals will, when faced with the evidence adduced before them. The suggestion seems to be that the AFPC is not going to impartially assess the available evidence. The NRA seems to suggest that a backdating to 1 September 2006 of any determination of this Commission, should it adjourn the proceedings, would be appropriate. This is quite contrary to the position of other parties and the position adopted by employers generally on wage rate applications before this Commission.

- **The Queensland Chamber of Fruit and Vegetable Industries Co-operative (Union of Employers) Limited (QFVG)** – the QFVG support the application citing the need for consistency of outcomes as being very important. It also contends that the public interest requires this Commission to be informed about the circumstances of employers and employees within its jurisdiction following commencement of the new federal system. The *Work Choices Act* was passed by the Australian Parliament on 8 December 2005. Schedule 1A to the legislation, which deals with the establishment and operation of the AFPC, commenced to operate on 14 December 2005. One would think that the parties appearing on this application would have had sufficient time to assess the impact of that legislation on their membership.

- **Queensland Motel Employers Association, Industrial Organization of Employers (QMEA**) – the QMEA, in supporting the Minister's application, submitted that its non-constitutional corporation membership could be placed in an unfavourable position if this Commission makes a determination prior to the AFPC. Once again the submission presupposes that the AFPC is going to grant something less than that which this Commission will determine. The QMEA also submitted that we should adopt the same position as the AIRC did in December 2005. The QMEA contended that if this Commission awards an increase different to that of the AFPC then this will return employers in the accommodation sector to a system similar to a time when there were differences between Queensland and federal wages and allowances. The QMEA submitted that this Commission should seek to maintain parity on wage increases. It is, however, interesting to note that in the last Queensland state wage case the QMEA opposed the flow on of the AIRC decision: see Schedule 1.

- **Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA)** – the QRTSA submits that "the cohesion created by the QIRC's decision to increase the Queensland Minimum Wage in conjunction with the federal minimum wage for at least the past 10 years has allowed Queensland retailers to compete on a level playing field with their federal and interstate counterparts". This is a surprising submission given the QRTSA's position in recent Queensland state wage cases where it has opposed the flow on of AIRC decisions: see Schedule 1. The QRTSA estimates that approximately 50% of its membership will remain in the Queensland jurisdiction and more than 98% of its membership is award reliant. It is said that the businesses which will remain in the Queensland jurisdiction are small businesses – either sole

traders or partnerships - and the QRTSA is concerned that should this Commission grant an increase greater than the AFPC then its members will be at a competitive disadvantage to retailers in the federal jurisdiction.

- **Queensland Cane Growers' Association Union of Employers (QCGA)** – the QCGA in supporting the Minister's application submitted that it is "totally appropriate for the QIRC to give the AFPC an opportunity to hand down its first minimum wage determination and for the AIRC to deal with the matter before any attempt is made by this Commission to consider and reflect upon the quantum of the AFPC and AIRC decision into a general ruling to be applied to all Queenslanders". Further the QCGA submits that "to proceed with this application at this juncture could have the effect of undermining the benefits of what has been a long-standing national approach to minimum wage fixing in Federal and State Awards". We wish to make it clear – it will not be this Commission that undermines such a benefit or causes problems for employers. Rather, if there is to be "undermining" of any long-standing national approach such outcome rests squarely at the feet of the Commonwealth Government in changing the basis for the national minimum wage determination. Once again the QCGA states that "to continue the current proceedings could place in jeopardy the jobs of those employees within the QIRC jurisdiction". There is no suggestion that this Commission is likely to award an increase that is less than the AFPC. [It is interesting that employer parties have formed this view without one piece of evidence being available in this proceeding or the AFPC's deliberations. The inference being that either this Commission or the AFPC will not assess the relevant evidence before it appropriately. We can assure the parties that this Full Bench will appropriately assess the evidence before us. We accept that it is highly unlikely that the industrial tribunals of all States and the AFPC will arrive at the same conclusion because it is unlikely that the respective tribunals will have the same evidence before them. That is the consequence of the Commonwealth Government's decision to change the environment for the determination of minimum wage rates.] The QCGA also point to the "policy" of this Commission over many years of awarding the same wage increase as that granted by the AIRC yet when one looks at the submissions of the QCGA on the Queensland state wage cases one finds that the organisation has traditionally opposed the flow on and sought an increase less than that which the AIRC determined: see Schedule 1.

- **Queensland Hotels Association, Union of Employers (QHA)** – the QHA submitted that approximately 15% of employers in the industry are not incorporated and will remain in the Queensland jurisdiction. The QHA further contended that the pattern of state tribunals flowing on AIRC decisions on national wage cases provided employers with "stability and parity … and allowed businesses to operate on a level playing field". The QHA submits that it "does not see the benefit in causing wages inequity where there has previously been parity". This submission is interesting given that the QHA's position before recent Queensland state wage case hearings has been to seek smaller increases in wages and allowances than that granted by the AIRC: see Schedule 1. The creation of inequities arising from decisions of the AIRC and this Commission has not seemed to worry the QHA in previous years when making its submissions to this Commission. The QHA also points to the fact that different operative dates will cause problems for their members. The fact is that throughout the ten years where this Commission has flowed on increases granted by the AIRC there have always been different operative dates. Previously Queensland employers were generally advantaged by a 1 September operative date when some in the AIRC received increases from May or June in the respective years.

- **Australian Mines and Metals Association (AMMA)** – the AMMA adopted in its entirety the submission of the QCCI.

- **Brisbane City Council (Council)** – the Council advised that it supported the adjournment of the Queensland state wage case.

Submission – Queensland Council of Unions

[17] The QCU submitted that its application does not seek a wage and allowance adjustment for Queensland award workers who are engaged by constitutional corporations. The application, therefore, does not seek to intrude into the legislative arena of the Commonwealth. The QCU submits that its application has been filed in accordance with the provisions of the *Industrial Relations Act 1999* and it is within the jurisdiction of this Commission to hear and determine.

[18] The QCU accepts that in the past it has not sought anything other than to have this Commission adopt an outcome that was consistent with the AIRC decision. The QCU submit that the considerations made by the AIRC and this Commission on minimum wage determinations were made within a legislative framework that was "transparent, judicious in its assessment, and subject, if necessary, to appeal". The QCU also point to determinations of this Commission on matters such as long service leave, casual loading and redundancy which have resulted in different outcomes from AIRC determinations.

[19] The QCU submit that the order and structure that was connected with the securing of general wage and allowance increases flowing from the AIRC to various State tribunals has been irretrievably undermined by the legislative process establishing the AFPC. We intend to deal briefly with the legislative role of the AFPC later in this decision.

[20] The QCU estimate that around 42.4% of employees in Queensland will not be covered by the federal legislation and therefore will be affected by a determination of this Commission in B/2005/1197 and B/2005/1198.

Submission – Other organisations opposing the Minister's application

[21] The **AWU** supported and adopted the submissions of the QCU in opposing the Minister's application.

[22] Similarly the **Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA)** opposed the Minister's application to adjourn the Queensland state wage case. The SDA submitted that state employees would be financially disadvantaged by the delay sought by the Minister.

[23] Further, the **Australian Salaried Medical Officers Federation Industrial Organisation of Employees, Queensland (ASMOFQ)** also advised that it opposed the application to adjourn B/2005/1197 and B/2005/1198.

Submission – Queensland Government

[24] The Queensland Government strongly opposed the application by the federal Minister to adjourn proceedings in B/2005/1197 and B/2005/1198 until after a decision of the AFPC at some unspecified date in the future. The grounds on which the Queensland Government relied are as follows:

- this Commission has the clear jurisdiction and legislative responsibility to hear and determine applications for award and minimum wage adjustments for employees and employers in the Queensland system;
- there is no requirement in the *Industrial Relations Act 1999* for this Commission to follow or to wait for decisions at the federal level in making such adjustments;
- the objects of the *Industrial Relations Act 1999* are best served by continuing the practice of annual award and minimum wage adjustments for those employees who do not have access to wage increases under enterprise bargaining;
- the objects of the *Industrial Relations Act 1999* would be placed at risk if the Queensland state wage case was delayed, and there is no guarantee of when the AFPC will deliver its first decision;
- there is no justification in waiting for a decision by a federal wage-fixing body that operates under entirely different legislative parameters to this Commission, with no requirement to establish a system of fair wages and conditions;
- if the Australian Government is concerned about differing wage outcomes in the state and federal areas then it is the Australian Government that must take responsibility for that – not this Commission. It is the Australian Government that has turned its back on a system of wage-fixing that has produced consistent award wage outcomes over the past ten years at a state and federal level; and
- this Commission has considered and rejected a similar adjournment application in B209 and B308 of 2002: see *Queensland Council of Unions v Queensland Chamber of Commerce and Industry Ltd, Industrial Organisation of Employers* [2002] 171 QGIG 80.

[25] The Queensland Government also referred the Full Bench to its High Court challenge to the *Work Choices Act*. It is now known that the High Court proposes to hear the Queensland Government's challenge and those of other State Governments and organisations in early May 2006. Our statutory obligations were also raised by the Queensland Government: see s. 287(1) and (2), s. 273(1) and (2), s. 3(b) and (g) and s. 126(d) and (f) of the *Industrial Relations Act 1999*.

[26] The Minister's application is an attempt to apply a wage freeze, similar to that being experienced by employees governed by decisions of the AFPC, on employees who remain in the Queensland jurisdiction. If the QCU and AWU applications were adjourned until after the AFPC and the AIRC decisions were known, it may be well into the first half of 2007 before the Queensland state wage case could be heard and determined and that would be

unacceptable. The federal Minister is also asking this Commission to delay a hearing of the state wage case that is already underway with proposed dates set for the filing of evidence and for the hearing of the applications, in order to wait for a decision of a federal wage-fixing body that will operate under an entirely different legislative framework and set of wage-fixing parameters, where the AFPC Commissioners have yet to be appointed, where there is no firm indication of how the AFPC will operate and where no dates for the start of an AFPC wage review are known.

[27] The Queensland Government submitted that the objects of the *Industrial Relations Act 1999* and other relevant provisions of the Act require this Commission to balance economic and social factors in making determinations on matters such as state wage cases. This Commission has acknowledged this obligation to balance economic and social factors in previous Full Bench decisions: see *Queensland Councils of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others* (2003)171 QGIG 1417 at paragraph 25-29 and *The Australian Workers' Union of Employees, Queensland v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others AND Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B863 of 2005)*179 QGIG 879 at 881. In contrast with that, the Queensland Government submit that the focus of the federal legislation is based on the primacy of economic factors. There is no legislative requirement on the AFPC or the AIRC to establish a system of fair wages and conditions. Such provisions have recently been removed from the federal legislation.

[28] The Queensland Government in its submission also points to various terms and conditions of employment which differ as between the new federal system for constitutional corporations and transitional employers as compared to those who will remain in the Queensland system.

AIRC's December 2005 Decision

[29] In the last quarter of 2005 the ACTU filed an application under the *Workplace Relations Act 1996* to secure wage and allowance increases for federal award reliant employees. Shortly thereafter the *Workplace Relations Amendment (Work Choices) Bill 2005* was introduced and that Bill sought to remove the role of the AIRC in determining wage and allowance adjustments except for transitional employees. That role went to the AFPC. A directions hearing in the AIRC occurred on 17 November 2005. At this time the Full Bench of the AIRC said:

> "Assuming the [Work Choices] Bill is passed into law and becomes operative in its current form, it appears that the relevant provisions of the *Workplace Relations Act 1996* will cease to apply and the Commission's power to fix minimum wages will be confined to transitional employees. Should that occur further questions may arise in relation to these proceedings. It is inappropriate to simply disregard our current statutory responsibilities and adjourn these proceedings until a new legislative scheme has commenced to operate. On the other hand, it would also be inappropriate to issue directions which do not take account of the proposed legislation.".

[30] The *Work Choices Act* was passed by the Australian Parliament on 8 December 2005 with Schedule 1A dealing with the establishment and operation of the AFPC commencing to operate on 14 December 2005. The ACTU application was again before the Full Bench of the AIRC on 19 December 2005. In *Application by Transport Workers' Union of Australian and Others* (PR966840, Full Bench, 21 December 2005) the AIRC dealt with the implications of the introduction of the *Work Choices Act*. As a result of the enactment of that legislation the AIRC has had substantial limitations placed upon its powers and jurisdiction. As the Full Bench indicated in its decision of 21 December 2005:

> "The function of establishing and maintaining a safety net of fair and minimum wages and conditions of employment will disappear. It will be replaced by a system in which minimum wages are set having regard to the capacity for the unemployed and the low paid to obtain and remain in employment, employment and competitiveness across the economy, providing a safety net for the low paid and providing minimum wages for minors, trainees and employees with disabilities that ensure they are competitive in the labour market. These wage-setting functions will be carried out in part by the AFPC and in part by the Commission. The AFPC's wage-setting powers will apply to most employees, including in particular employees of constitutional corporations. The Commission will have responsibility to fix minimum wages for a residual group of employees covered by Federal awards who are not within the jurisdiction of the AFPC. This group will be comprised of employees of employers said not to be subject to the Commonwealth's direct legislative competence. Employees in this group are referred to as transitional employees.
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> …

> It is clear that after the commencement of the legislation, expected to be in March 2006, the Commission's minimum wage decisions will affect transitional employees only. It is also clear that in exercising its functions of fixing minimum wages for transitional employees the Commission's discretion will be circumscribed.
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> …
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> Under this section the Commission will be obliged, among other things, to have regard to the principle that the wages of transitional employees should be competitive with the wages of employees covered by the wage setting functions of the AFPC. The Commission will also be required to have regard to the wage-setting decisions of the AFPC and any relevant economic statements by that body. In light of these provisions we accept the Commonwealth's submission that under the new arrangements the AFPC will be the body primarily responsible for the fixation of minimum wages for employees covered by the Federal system.
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> … And while it would be within our power to proceed with the claims before us so far as they relate to transitional employees, as the ACTU proposes, we do not think it is desirable that the Commission should hear and determine claims for increases in minimum wages for transitional employees before the AFPC has made any determination in relation to the bulk of the employees covered by the Federal system. This conclusion flows from the criteria which this Commission is to apply in setting wages for transitional employees, particularly the weight to be given to determinations and policy statements made by the AFPC. In the circumstances it would be undesirable for the Commission to pre-empt the AFPC's role. Section 8(3)(a) of Schedule 13 requires that the Commission have regard to the desirability of consistency in the minimum rates for the two groups of employees concerned. The legislation gives the lead role in that regard to the AFPC.".

[31] At s. 8(2) of Schedule 13 of the *Work Choices Act* the AIRC's functions are limited to ensuring that minimum safety net entitlements are maintained for wages and other specified monetary entitlements having regard to:

- the desirability of high levels of productivity;
- low inflation;
- creation of jobs; and
- high levels of employment.

At s. 8(3) of the legislation the AIRC must have regard to the wage setting decisions of the AFPC and, in particular, any statements by the AFPC about the effects of wage increases on productivity, inflation and levels of employment. It was this provision that caused the AIRC not to proceed with the ACTU application before it until such time as the AFPC had made its determination.

[32] The provisions of the *Industrial Relations Act 1999* do not require this Commission to consider AFPC deliberations before determining Queensland state wage cases. The basis of the decision of the AIRC to adjourn the application before it was brought about by the provisions of the *Work Choices Act*. This Commission does not encounter the legislative difficulties faced by the AIRC in December 2005.

Australian Fair Pay Commission

[33] Section 7I of the *Work Choices Act* provides for the AFPC to conduct wage "reviews" and to exercise its wage setting powers "as necessary". In fixing wages the AFPC must, as a result of s. 7J of the federal legislation, take into account:

- the needs of the unemployed and low paid to obtain and remain in employment;
- employment and competitiveness;
- the provision of a safety net for low paid; and
- ensuring juniors, trainees, and workers with a disability are competitive in the labour market.

[34] The AFPC is not required to consider living standards in the community, fairness, the needs of the low paid and the public interest – matters that the AIRC was previously obliged to consider. Another difference between the workings of the AIRC and the AFPC is that the *Work Choices Act* provides for no challenge or appeal process in respect of decisions of the AFPC.

Conclusion

[35] There is a specific obligation contained in s. 287(2) (see also s. 8A) of the *Industrial Relations Act 1999* that the Commission ensure that a general ruling about a minimum wage is made each calendar year. The legislative framework under which the Queensland Industrial Relations Commission is required to hear and determine matters such as minimum wage cases is substantially different to the legislative framework under which the AFPC will operate.

[36] During the past nine years this Commission has had before it applications by the QCU and AWU which have sought simply to flow on the decision of the AIRC. The current applications do not seek any such relief. The applications seek to have this Commission hear and determine, on the evidence before it, a claim for an increase of 4% in wages and allowances. As we have said previously, there is a real likelihood that, as a result of the removal of power to determine a national minimum wage from the AIRC, the various State industrial tribunals will determine differing minimum wages, as will the AFPC. This may not be seen as ideal given the history of minimum wage determinations over recent years. The problem is that the change in dealing with minimum wage determinations is the result of actions taken by the Commonwealth Government in enacting the *Work Choices Act* – it is not the result of any action taken by this Commission or the applicants in B/2005/1197 and B/2005/1198, i.e. the QCU and the AWU. We have a legislative obligation to hear these applications and determine them on the material presented by those who appear in support or in opposition to the applications. The matters raised by various organisations during the course of this hearing are matters that, no doubt, will be argued before the Full Bench when dealing with the substantive applications.

[37] The issue of disparate outcomes arising from similar applications in the Queensland and federal systems has been dealt with previously by this Commission: see *Queensland Council of Unions & Anor v Queensland Chamber of Commerce and Industry Ltd, Industrial Organisation of Employers & Ors* [2002] 171 QGIG 80. Schedule 1 to this decision outlines the position adopted in recent Queensland state wage cases of those organisations supporting the Minister's application. Other than the AIG, those organisations have opposed the QCU and AWU applications to flow on the AIRC decision.

[38] The federal Minister gains no support from any legislative provision in the *Industrial Relations Act 1999* for his application. The QCU and AWU applications are made in accordance with the *Industrial Relations Act 1999.* It is the QCU and the AWU that have decided, unlike in recent previous years, not to await any determination of a federal body on a national minimum wage before they seek a determination of their claims.

[39] The directions proposed in B/2005/1197 and B/2005/1198 provide a timetable which enables parties an opportunity to adduce further evidence if that evidence is not available at the time when their witness statements are required to be filed and served. If there is a decision or announcement by the AFPC, or the AIRC, in that time then the parties will be at liberty to seek leave to adduce that material

[40] It is the usual practice of this Commission to have a decision on the state wage case released early in August so that the decision is gazetted prior to 1 September. This Full Bench will hear the current applications in B/2005/1197 and B/2005/1198 within the timeframe established by the previously proposed directions. What the Full Bench will do is reserve our decision following completion of the evidence and submissions until mid to late July 2006. If any announcement or decision of the AFPC is made during that time, or is clearly pending, then we will give the parties an opportunity to place that announcement or decision before this Full Bench. The directions as proposed in B/2005/1197 and B/2005/1198 will issue today.

[41] A Declaration of Intent will also issue today in respect of these applications.

Application dismissed.

Order accordingly.

D.M. LINNANE, Vice President.

A.L. BLOOMFIELD, Deputy President.

I.C. ASBURY, Commissioner.

Hearing Details:
2006 6 February.

Mr I. Turner for the Australian Mines and Metals Association.
Mr G. Trost for Queensland Cane Growers' Association, Union of Employers.
Mr J. Goos for the Queensland Hotels Association, Union of Employers.
Ms R. Scott for the Queensland Motel Employers

Appearances:
Mr G. Martin S.C., instructed by Blake Dawson Waldron for the Applicant.
Mr S. Nance for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.
Mr M. Crimmins for Australian Industry Group, Industrial Organisation of Employers (Queensland).
Association, Industrial Organization of Employers.
Ms K. Venning for The Queensland Chamber of Fruit and Vegetable Industries Co-operative (Union of Employers) Limited.
Mr J. Price for Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).
Ms V. James-McPhee for National Retail Association Limited, Union of Employers.
Mr T. Shipstone for the Crown.
Ms D. Ralston for the Queensland Council of Unions.
Mr C Simpson for The Australian Workers' Union of Employees, Queensland.

Released: 20 February 2006

SCHEDULE 1

Year	**AIRC Position – Supported by AWU and QCU**	Qld Govt.	QCCI	AIG	LGAQ.	QMEA	QRTSA	QHA	NRA / RAQ	QCGA	QFVG
2005	**$17/wk**	Supports	Opposed Supports a $10 increase		Supports	Opposed No alternative put forward	Opposed Supports a $10 increase		Opposed No alternative put forward	Opposed to increase and the operative date Support a $10 increase	
2004	**$19/wk**	Supports	Opposed Supports a $10 increase	Not opposed	Supports		Opposed No alternative put forward. Left to the Com	Opposed Supports a $12 increase	Opposed No alternative position put forward	Opposed Supports a $10 increase	
2003	**$17/wk increase in award rates up to and including $731.80** **$15/wk increase in award rates above $731.80**	Supports	Opposed Supports $12/wk increase in award rates and the QMW	Not opposed	Supports				Opposed No alternative position put forward	Opposed Seeks relief under s.287(5) to be excluded	Opposed No alternatives put forward Does not seek exclusion from the ruling
2002	**$18/wk**	Supports	Opposed Supports an increase of $10/wk	Not opposed	Opposed Supports an increase of $10/wk		Opposed Support an increase of $10/wk	Opposed Supports an increase of $10/wk	Opposed No alternative position put forward		
2001	**$13/wk increase in award rates up to and including $490/wk** **$15/wk from $490-$590/wk** **$17 increase in award rates above $590/wk**	Supports	Opposed Supports an increase of $10/wk	Not opposed	Opposed			Opposed Supports an increase of $10/wk	Opposed Increase to minimum wage only is supported No alternative position put forward	Opposed No alternative position put forward	

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2000	**$15/wk increase in award rates**	Supports	Opposed Supports $8/wk	Not opposed	Opposed No alternative put forward			Opposed Supports application on award-by-award basis No alternative put forward		Opposed To quantum and operative date Sought relief under s. 287(4) to be excluded	
1999	**$12/wk increase in award rates up to and including $510/wk** **$10/wk increase in award rates above $510/wk**	Not opposed	Not opposed	Not opposed	Not opposed			Not opposed	Not opposed	Opposed To quantum and date	
1998	**$14/wk increase in award rates up to and including $550/wk** **$12/wk increase between $550 and $700/wk** **$10/wk increase over $700/wk**		Supports						Opposed		
1997	**$10/wk safety net adjustment from 1 June to include any outstanding $8/wk safety net adjustments to be available from the same date**	Supports							Supports The suggested wage increases By way of counter claim seeks to remove minimum wage and make determination on case by case basis		

Abbreviations: Com = Commission AIG = Australian Industry Group (Queensland) LGAQ = Local Government Association of Queensland Inc. QCCI = Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers QMEA = Queensland Motel Employers Association, Industrial Organization of Employers	QRTSA = Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) QHA = Queensland Hotels Association, Union of Employers RAQ = National Retail Association Limited, Union of Employers QCGA = Queensland Cane Growers' Association, Union of Employers QFVG = The Queensland Chamber of Fruit and Vegetable Industries Co-operative (Union of Employers) Limited