QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*Application filed by the State of Queensland v Queensland Council of Unions & Ors* [2019] QIRC 151
PARTIES:	**State of Queensland (Office Industrial Relations)** (Applicant) v **Queensland Council of Unions** (First Respondent) & **Together Queensland, Industrial Union of Employees** (Second Respondent) & **The Australian Workers' Union of Employees, Queensland** (Third Respondent)
CASE NO:	B/2019/32; B/2019/33; B/2019/34
PROCEEDING:	Application in existing proceedings
DELIVERED ON:	27 September 2019
HEARING DATE:	27 September 2019
MEMBERS:	O'Connor VP Thompson IC Hartigan IC
HEARD AT:	Brisbane
ORDERS:	**1. Application granted**

CATCHWORDS:	INDUSTRIAL LAW – STATE WAGE CASE – application for legal representation – where application is opposed – whether legal representation would enable the proceedings to be dealt with more efficiently having regard to the complexity of the matter
LEGISLATION:	*Industrial Relations Act* 2016 (Qld) s 145 458, s 458, s 530 *Industrial Relations Act* 1999 (Qld) s 129
CASES:	*National Tertiary Education Industry Union v Monash University* [2016] FWC 5539 *State of Queensland v Together Queensland (No. 1)* [2018] QIRC 5 *Warrell v Walton* [2013] FCA 291; 233 IR 335
APPEARANCES:	Mr C Murdoch QC instructed by the Office of Industrial Relations Mr J Spreckley for the Queensland Council of Unions Mr M Thomas for Together Queensland, Industrial Union of Employees Mr A Santelises for the Australian Workers' Union of Employees, Queensland

Ex tempore Reasons for Decision

[1] This is an application by the State of Queensland about seeking leave to be represented by counsel at the hearing of the proceedings B/2019/32, 33 and 34. It concerns the State wage case for 2019 regarding a general ruling sought by three applicant unions pursuant to section 458 of the *Industrial Relations Act 2016* about a minimum Queensland wage.

[2] A party requires the permission of a Commission before it can be legally represented. Section 530 of the Industrial Relations Act gives a discretionary power to the Full Bench to allow legal representation in one or more of the requirements of section 530, and only

if those requirements are satisfied. Section 530(4)(a) relevantly provides that the Full Bench may grant permission for a person to be represented by a lawyer only if it would enable the proceedings to be dealt with more efficiently, having regard to the complexity of the matter.

[3] This Full Bench has had to consider on a previous occasion in *Queensland v Together (No. 1)* which is cited at [2018] QIRC 5. In that decision, reference was made back to – to – the Full Bench was referred to a decision on that occasion, rather, of Fair Work Commission in *National Tertiary Education Industry Union v Monash University* which is cited at [2016] FWC 5539. Relevantly there was written that the NTEU is correct when it says that:

> …just because a matter involves contested facts or there is a contest of interpretation that this does not mean that the matter is inherently complex. However, the decision as to whether the requirements of section 596(2)(a)-(c) of the Fair Work Act have been met such the Commission might be considered in any particular case requires a consideration of the circumstance of that case. Broad statements as to the complexity of little use in making such an assessment. And assumptions should be avoided.

The Commissioner went on to note that:

> The question pursuant to 596(2)(a) is whether the matter could be dealt with more efficiently taking into account its complexity. The matter does not have to be complex per se or reach such a threshold level of complexity before permission might be considered. The test is one of efficiency taking into account the complexity that is in this matter.
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> In any event, I'm satisfied that there is a level of complexity in the matter before me. In these circumstances I'm satisfied the matter can be dealt with more efficiently if permission was granted.[1]

[4] The nature of the matter that is required to be determined by the Full Bench is set out in the submissions filed on behalf of the State of Queensland and also the applicant unions. The State opposes an increase to the rates of pay in State awards that apply to the public service sector which have received a flow-on from certified agreement rates by virtue of section 129 of the repealed *Industrial Relations Act 1999*, and of section 145 of the *Industrial Relations Act 2016*.

[5] The position advanced by the State of Queensland represents a departure for the position that has been historically taken by the State in previous state wage cases. A perusal of the jurisprudence in this Commission clearly reflects that. The position of the State of Queensland is likely to be disputed at a higher level by the applicant unions, and the Commission will require to determine, amongst other things, whether in the exercise of its powers under section 458, there ought to be no increase to the rates of pay that apply to the state public sector employees whose awards have received a flow-on from the certified agreement rates.

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[1] [2016] FWC 5539 [23], [29]-[30].

[6] The Commission will be required to consider the following matters that have been set out in the affidavit of Mr James, amongst other places. Whether or not the position adopted by the State is consistent with the objects and purposes of the *Industrial Relation Act*. Where there are cogent reasons for the Commission not to follow the ruling of the expert panel of the Fair Work Commission in the annual wage review 2018 to 2019, the decision being cited at [2019] FWCFB 3500, and taking into account the effect upon award wage rates of a flow-on from certified agreement rates of pay. The potential impact upon enterprise bargaining that has resulted, and will result, if the award rates of pay continue to exceed the rates of pay in certified agreements as a result of the state wage case increases. And finally, the impact of applying a three per cent increase to all award rates of pay.

[7] The Full Bench has considered the submissions that have been advanced today by the applicant unions, noting that the Australian Workers' Union has taken a neutral position, but considered the Queensland Council of Unions and Together Queensland who oppose the application.

[8] Mr Thomas, in his submissions, rightly drew our attention to Warrell v Walton, a decision of Justice Flick in the Federal Court of Australia, which is cited at [2013] fair full – FCA 291, and it's reported in 233 IR 335, and particular at paragraph 24 where the provision referred to under the Fair Work Act, namely section 596, should only be exercised, not in an automatic manner, but after a proper exercise of the discretion. It's not, as his Honour considered there, an automatic provision, but one requiring permission. It is not, as he said, a mere formality.

[9] The Full Bench, having considered the submissions, having regard to the nature of the proceedings that are currently before us – the applications under section 458 of the Act – are minded to grant the State of Queensland the opportunity to be represented by counsel. The Full Bench recognises that the submissions made by the State of Queensland requires a degree of complexity and, as referred to in previous decisions, requiring this Full Bench to made determinations for the first time, new set of jurisprudence requiring this bench to consider, amongst other things, statutory interpretation, the matter which Justice Kirby has spoken of in his paper on statutory interpretation – what he called the meaning of meaning – and some associated decisions.

[10] But in the end of the day, the Full Bench thinks that this could have potentially significant public sector wide implications. The impact upon all government departments and agencies, and it's a nature of a matter which requires, in our view, the State of Queensland to be represented by counsel. Remembering always, that counsel's obligations are to this Commission first and foremost above a client.

Order

1. Application granted