

**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

CITATION: *In the making of the of the Lockyer Valley Regional Council Certified Agreement (Field) 2021 [2021] QIRC 424*

PARTIES: **Lockyer Valley Regional Council**  
and  
**The Australia Workers' Union of Employees, Queensland**  
**Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland**  
**Automotive, Metals, Engineering, Printing and Kindred Industries, Industrial Union of Employees, Queensland**  
**Transport Workers' Union of Australia, Union of Employees (Queensland Branch)**

CASE NO: CB/2021/57

PROCEEDING: Application for certification of an agreement

DELIVERED ON: 10 December 2021

HEARING DATE: 9 December 2021

MEMBER: Hartigan IC

HEARD AT: Brisbane

ORDER: **The Lockyer Valley Regional Council Certified Agreement (Field) 2021 is certified**

CATCHWORDS: INDUSTRIAL LAW – COLLECTIVE BARGAINING – application for certification of an agreement – where applicant did not comply with s 169(4) of the *Industrial Relations Act 2016* (Qld) – where applicant seeks leave of Commission to waive non-compliance – where Commission exercises discretion to waive non-compliance – requirements for certification – agreement certified

LEGISLATION: *Industrial Relations Act 2016*, ss 169, 189, 195, 198, 196, 216, 227, 228, 246, 250, 539

APPEARANCES: Mr C. Drew, Mr D. Mcpherson and Ms K. Natalier  
for Lockyer Valley Regional Council

Mr D. Marr for the Australian Workers' Union of  
Employees, Queensland

### Reasons for Decision

- [1] The Lockyer Valley Regional Council ('the Council') has applied to certify the *Lockyer Valley Regional Council Certified Agreement (Field) 2021* ('the agreement'), pursuant to s 189 of the *Industrial Relations Act 2016* (Qld) ('the Act').
- [2] The named parties to the agreement are the Council and the following employee organisations:
- (a) The Australia Workers' Union of Employees, Queensland;
  - (b) Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland;
  - (c) Automotive, Metals, Engineering, Printing and Kindred Industries, Industrial Union of Employees, Queensland; and
  - (d) Transport Workers' Union of Australia, Union of Employees (Queensland Branch).
- [3] The hearing of this application was listed before the Commission on 9 December 2021.
- [4] On 8 December 2021, the Industrial Registry issued correspondence to the parties with respect to the material filed in support of the application. Relevantly, the parties were placed on notice that, at the hearing of the matter, the Commission intended to seek further information with respect to the parties' compliance with the matters set out, relevantly, in ss 169(4) and 250(2)(a)-(c)<sup>1</sup> of the Act.
- [5] In response to this correspondence, the Council indicated that it would file an additional affidavit addressing the matters. Following this, an affidavit of Mr Ian Church was filed in the Industrial Registry on 9 December 2021.

#### *Compliance with s 169(4) of the Act.*

- [6] Section 195 of the Act provides that, in granting an application, the Commission must be satisfied that, *inter alia*, there has been compliance with s 169 of the Act.

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<sup>1</sup> The correspondence also identified that the material filed was silent as to the matters referred to in s 210(1) of the Act.

- [7] Section 169(4) of the Act provides that, relevantly, if an existing bargaining agreement applies to the parties then the proposer must not give the notice of intention more than six months before the nominal expiry date of the bargaining agreement.
- [8] The nominal expiry date for the *Lockyer Valley Regional Council Certified Agreement (Field) 2018* is 2 August 2021. The notice of intention was issued on 5 January 2021, a period of more than six months before the nominal expiry date.
- [9] The notice of intention was lodged outside of the time prescribed by s 169(4) of the Act. The material relied on by the Council identified that the error as to when the notice of intention should be issued arose due to a misapprehension, on behalf of the Council, as to the operation of s 169(4) of the Act.
- [10] The Council's failure to comply with s 169(4) of the Act is an error of substance.
- [11] At the hearing, the Council sought an order that the Commission, pursuant to s 539(e) of the Act, waive compliance with s 169(4) of the Act.
- [12] Section 539 of the Act provides the Commission with powers incidental to the exercise of jurisdiction. These powers include, *inter alia*, a power to correct, amend or waive an error of substance. Relevantly s 539(e) of the Act is in the following terms:

**539 Powers incidental to exercise of jurisdiction**

Except as otherwise provided for by this Act or the rules, the court, commission or registrar may—

...

- (e) correct, amend or waive an error, defect or irregularity in the proceedings, whether substantive or formal; and

...

- [13] The notice of intention was issued approximately four weeks before the time prescribed in s 169(4) of the Act. The Council concedes that it erred in issuing the notice of intention outside of the period prescribed in s 169(4) of the Act. I note that no party objects to the application made by the Council to waive its non-compliance with s 169(4) of the Act.
- [14] In the circumstances of the matter, I consider that there is no prejudice to either the parties to the proposed agreement or to the agreement that has been struck, if leave is granted. For these reasons, pursuant to s539(e) of the Act, I waive the Council's non-compliance with s 169(4) of the Act, in so far as the notice of intention was issued outside the period of time prescribed in s 169(4) of the Act.

*Compliance with s 250 of the Act*

- [15] Section 198(1)(c) of the Act provides that the Commission must be satisfied that the proposed bargaining instrument includes or is accompanied by the information required under s 250 of the Act.
- [16] Section 250 provides that the application must be accompanied by an affidavit, and is in the following terms:

**250 Requirement for application relating to proposed bargaining instrument**

- (1) This section applies to an application for the certification of an agreement, or the making of a bargaining award, under chapter 4, part 5.
- (2) The application must be accompanied by an affidavit that—
  - (a) contains the wage-related information for the employees who are or will be covered by the proposed bargaining instrument; and
  - (b) the steps taken by the parties to the instrument to provide for equal remuneration for work of equal or comparable value in the instrument; and
  - (c) for a provision that allows differential treatment of wages for different groups of employees—the justification for including the provision in the instrument.
- (3) The affidavit must –
  - (a) be in the form required under the rules; and
  - (b) be signed by or for each of the parties to the instrument.
- (4) In this section –

*Proposed bargaining instrument* see section 168.

- [17] Section 246 of the Act provides the meaning of ‘wage-related information’ as follows:

**250 Definition for chapter**

In this chapter –

*wage related information*, for employees covered by a proposed bargaining instrument or an instrument mentioned in section 7(1), means information about each of the

following matters—

- (a) the distribution of the employees by gender;
- (b) the difference between the average weekly full-time equivalent earnings of male employees and female employees covered by the instrument (the gender pay gap);
- (c) any major factors identified as contributing to the gender pay gap;
- (d) if appropriate, the projected effect of the instrument on the gender pay gap.

- [18] The affidavit of Mr Church filed on 9 December 2021, did not address, in any meaningful way, the information required to be included in an affidavit and set out in s 250(2)(a) – (c) of the Act. I expressed the view I had formed with respect to Mr Church’s affidavit

to the Council at the hearing on 9 December 2021. The Council proposed that it file and serve an additional affidavit by 12 noon, 10 December 2021, addressing the material required to be addressed in s 250 of the Act.

- [19] I subsequently issued directions ordering that the Council file and serve a further affidavit addressing the matters set out in s 250 of the Act by 12 noon, 10 December 2021. I provided the respondent unions with an opportunity to respond to any material filed by 4pm, 10 December 2021.
- [20] The Council filed a further affidavit of Ian Church on 10 December 2021. On 10 December 2021, all union parties advised in writing that they have reviewed the Council's supplementary affidavit filed on 10 December 2021 and have no objections to the new material contained therein.
- [21] Following receipt of Mr Church's further affidavit of 10 December 2021, I am now satisfied that the application is accompanied by an affidavit in the terms set out in s 250 of the Act.
- [22] Having determined the matters set out above, I will now consider the application for certification of the proposed agreement.
- [23] As required by s 189(3) of the Act, the application was made within 21 days of the date on which the agreement was signed by the named parties.
- [24] The agreement applies to the Council, Council employees covered by the *Queensland Local Government Industry (Stream B Award) – State 2017* and *Queensland Local Government Industry (Stream C Award) – State 2017* and the named parties as provided for in paragraph [2] (a) – (d) above.
- [25] Having regard to the materials filed,<sup>2</sup> I am satisfied that;
- (a) each relevant requirements under Ch 4, Pt 5, Sub-Div.2 of the Act has been satisfied; and
  - (b) there is nothing in the agreement which would require the Commission to refuse to grant the application under Ch 4, Pt 5, Sub-Div.3 of the Act
- [26] Accordingly, the application to certify the *Lockyer Valley Regional Council Certified Agreement (Field) 2021* is granted.

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<sup>2</sup> Application for certification filed on 22 November 2021 and affidavits of Mr Ian Church each filed on 22 November 2021, 9 November 2021 and 10 November 2021.

[27] The *Lockyer Valley Regional Council Certified Agreement (Field) 2021* operates from the day it was certified, namely, 10 December 2021.

[28] Although the nominal expiry date is 10 December 2023, it continues to operate until it is terminated under ss 227 or 228 of the Act.

[29] I make the following order:

**The *Lockyer Valley Regional Council Certified Agreement (Field) 2021* is certified.**