

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Application to amend Burke Shire Council Certified Agreement 2022 [2023] QIRC 025*

PARTIES: **Burke Shire Council**

AND

**The Australian Workers' Union of Employees, Queensland**

**Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland**

**Plumbers & Gasfitters Employees' Union Queensland, Union of Employees**

**Queensland Services, Industrial Union of Employees**

CASE NO: CB/2022/124

PROCEEDING: Application to amend bargaining instrument

DELIVERED ON: 25 January 2023

MEMBER: McLennan IC

HEARD AT: On the papers

ORDER: **1. The *Burke Shire Council Certified Agreement 2022* is certified as amended and will operate on and from 25 January 2023.**

CATCHWORDS: INDUSTRIAL LAW – COLLECTIVE BARGAINING – application for amendment of an agreement – requirements for amendment – agreement amended

LEGISLATION: *Industrial Relations Act 2016 (Qld) s 225*

## Reasons for Decision

### Background

- [1] On 9 November 2022, the Burke Shire Council (Council) filed an application to amend the *Burke Shire Council Certified Agreement 2022* (the Agreement) pursuant to s 225 of the *Industrial Relations Act 2016* (Qld) (the IR Act).
- [2] Council submits the amendment is required because the figures in Schedule 1 do not accurately reflect the annual wage increase stipulated under cl 3.1.1 of the Agreement.
- [3] Council proposes to amend the Agreement by deleting Schedule 1 and inserting the following in lieu thereof:

#### SCHEDULE 1: Wages

Year:	2022		2023		2024	
Increase:	The greater of 2.5% or \$24		The greater of 2.6% or \$25		The greater of 2.75% or \$27	
Award Level	Weekly Rate	Annual Rate	Weekly Rate	Annual Rate	Weekly Rate	Annual Rate

#### LGIA 2017 - Stream A - Division 2 - Section 1 (Administration Employees)

Level 1, year 1	\$936.57	\$48,701.64	\$961.57	\$50,001.64	\$988.57	\$51,405.64
Level 1, year 2	\$948.14	\$49,303.28	\$973.14	\$50,603.28	\$1,000.14	\$52,007.28
Level 1, year 3	\$966.67	\$50,266.84	\$991.80	\$51,573.78	\$1,019.08	\$52,992.06
Level 1, year 4	\$984.66	\$51,202.11	\$1,010.26	\$52,533.37	\$1,038.04	\$53,978.03
Level 1, year 5	\$1,003.54	\$52,183.90	\$1,029.63	\$53,540.68	\$1,057.94	\$55,013.05
Level 1, year 6	\$1,019.80	\$53,029.77	\$1,046.32	\$54,408.54	\$1,075.09	\$55,904.78
Level 2, Year 1	\$1,038.91	\$54,023.28	\$1,065.92	\$55,427.89	\$1,095.23	\$56,952.15
Level 2, Year 2	\$1,057.76	\$55,003.47	\$1,085.26	\$56,433.56	\$1,115.11	\$57,985.48
Level 2, Year 3	\$1,076.61	\$55,983.66	\$1,104.60	\$57,439.23	\$1,134.98	\$59,018.81
Level 2, Year 4	\$1,089.10	\$56,633.38	\$1,117.42	\$58,105.85	\$1,148.15	\$59,703.76
Level 3, year 1	\$1,107.93	\$57,612.50	\$1,136.74	\$59,110.43	\$1,168.00	\$60,735.96
Level 3, year 2	\$1,119.89	\$58,234.51	\$1,149.01	\$59,748.61	\$1,180.61	\$61,391.70
Level 3, year 3	\$1,138.74	\$59,214.70	\$1,168.35	\$60,754.28	\$1,200.48	\$62,425.03
Level 3, year 4	\$1,157.60	\$60,195.42	\$1,187.70	\$61,760.50	\$1,220.36	\$63,458.92
Level 4, year 1	\$1,176.43	\$61,174.54	\$1,207.02	\$62,765.08	\$1,240.21	\$64,491.12
Level 4, year 2	\$1,195.30	\$62,155.80	\$1,226.38	\$63,771.85	\$1,260.11	\$65,525.57
Level 4, year 3	\$1,211.60	\$63,003.27	\$1,243.10	\$64,641.35	\$1,277.29	\$66,418.99
Level 4, year 4	\$1,230.47	\$63,984.52	\$1,262.46	\$65,648.12	\$1,297.18	\$67,453.44
Level 5, year 1	\$1,249.30	\$64,963.64	\$1,281.78	\$66,652.69	\$1,317.03	\$68,485.64
Level 5, year 2	\$1,265.62	\$65,812.18	\$1,298.52	\$67,523.29	\$1,334.23	\$69,380.18
Level 5, year 3	\$1,284.47	\$66,792.36	\$1,317.86	\$68,528.96	\$1,354.11	\$70,413.51

Level 6, year 1	\$1,315.88	\$68,426.01	\$1,350.10	\$70,205.08	\$1,387.23	\$72,135.72
Level 6, year 2	\$1,347.27	\$70,058.05	\$1,382.30	\$71,879.56	\$1,420.31	\$73,856.25
Level 6, year 3	\$1,378.73	\$71,693.83	\$1,414.57	\$73,557.87	\$1,453.48	\$75,580.71
Level 7, year 1	\$1,410.12	\$73,326.41	\$1,446.79	\$75,232.90	\$1,486.57	\$77,301.80
Level 7, year 2	\$1,441.55	\$74,960.59	\$1,479.03	\$76,909.56	\$1,519.70	\$79,024.58
Level 7, year 3	\$1,472.95	\$76,593.17	\$1,511.24	\$78,584.59	\$1,552.80	\$80,745.66
Level 8, year 1	\$1,510.68	\$78,555.14	\$1,549.95	\$80,597.57	\$1,592.58	\$82,814.01
Level 8, year 2	\$1,548.35	\$80,514.45	\$1,588.61	\$82,607.82	\$1,632.30	\$84,879.54
Level 8, year 3	\$1,586.06	\$82,475.35	\$1,627.30	\$84,619.71	\$1,672.05	\$86,946.76
Level 8, year 4	\$1,621.46	\$84,315.80	\$1,663.62	\$86,508.01	\$1,709.37	\$88,886.98
Level 8, Year 5	\$1,656.84	\$86,155.72	\$1,699.92	\$88,395.77	\$1,746.67	\$90,826.65

Award Level	Weekly Rate	Annual Rate	Weekly Rate	Annual Rate	Weekly Rate	Annual Rate
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**LGIA 2017 - Stream B - Division 2 - Section 5 (Operational Services Employees)**

Level 1, first 6 months	\$909.87	\$47,313.24	\$934.87	\$48,613.24	\$961.87	\$50,017.24
Level 1, after first 6 months	\$921.41	\$47,913.32	\$946.41	\$49,213.32	\$973.41	\$50,617.32
Level 2	\$933.05	\$48,518.60	\$958.05	\$49,818.60	\$985.05	\$51,222.60
Level 3	\$944.92	\$49,135.84	\$969.92	\$50,435.84	\$996.92	\$51,839.84
Level 4	\$957.02	\$49,765.04	\$982.02	\$51,065.04	\$1,009.03	\$52,469.33
Level 5	\$972.64	\$50,577.28	\$997.93	\$51,892.29	\$1,025.37	\$53,319.33
Level 6	\$998.86	\$51,940.85	\$1,024.83	\$53,291.31	\$1,053.02	\$54,756.82
Level 7	\$1,025.39	\$53,320.25	\$1,052.05	\$54,706.58	\$1,080.98	\$56,211.01
Level 8	\$1,049.47	\$54,572.27	\$1,076.75	\$55,991.15	\$1,106.36	\$57,530.91
Level 9	\$1,076.11	\$55,957.54	\$1,104.09	\$57,412.43	\$1,134.45	\$58,991.28

**LGIA 2017 - Stream C - Division 2 - Section 1 (Building Trade Services)**

Building Worker L1(a)	\$865.82	\$45,022.64	\$890.82	\$46,322.64	\$917.82	\$47,726.64
Building Worker L1(b)	\$884.36	\$45,986.72	\$909.36	\$47,286.72	\$936.36	\$48,690.72
Building Worker L1(c)	\$909.31	\$47,284.12	\$934.31	\$48,584.12	\$961.31	\$49,988.12
Building Worker L1(d)	\$932.50	\$48,490.00	\$957.50	\$49,790.00	\$984.50	\$51,194.00
Building Worker L2	\$957.40	\$49,784.80	\$982.40	\$51,084.80	\$1,009.42	\$52,489.63
Building tradesperson, level 1	\$974.70	\$50,684.40	\$1,000.04	\$52,002.19	\$1,027.54	\$53,432.25

Building tradesperson, level 2	\$1,001.05	\$52,054.38	\$1,027.07	\$53,407.79	\$1,055.32	\$54,876.51
Building tradesperson, level 3	\$1,051.77	\$54,692.20	\$1,079.12	\$56,114.19	\$1,108.79	\$57,657.33

**LGIA 2017 - Stream C - Division 2 - Section 2 (Engineering and Electrical/Electronic Services)**

C14	\$865.82	\$45,022.64	\$890.82	\$46,322.64	\$917.82	\$47,726.64
C13	\$884.36	\$45,986.72	\$909.36	\$47,286.72	\$936.36	\$48,690.72
C12	\$909.31	\$47,284.12	\$934.31	\$48,584.12	\$961.31	\$49,988.12
C11	\$932.50	\$48,490.00	\$957.50	\$49,790.00	\$984.50	\$51,194.00
C10	\$974.70	\$50,684.40	\$1,000.04	\$52,002.19	\$1,027.54	\$53,432.25
C9	\$1,001.05	\$52,054.38	\$1,027.07	\$53,407.79	\$1,055.32	\$54,876.51
C8	\$1,027.64	\$53,437.51	\$1,054.36	\$54,826.89	\$1,083.36	\$56,334.63
C7	\$1,051.77	\$54,692.20	\$1,079.12	\$56,114.19	\$1,108.79	\$57,657.33
C6	\$1,105.18	\$57,469.13	\$1,133.91	\$58,963.32	\$1,165.09	\$60,584.81
C5	\$1,131.18	\$58,821.35	\$1,160.59	\$60,350.70	\$1,192.51	\$62,010.35
C4	\$1,158.59	\$60,246.59	\$1,188.71	\$61,813.00	\$1,221.40	\$63,512.86
C3	\$1,211.77	\$63,011.79	\$1,243.27	\$64,650.10	\$1,277.46	\$66,427.98
C2 (a)	\$1,238.47	\$64,400.26	\$1,270.67	\$66,074.66	\$1,305.61	\$67,891.72
C2 (b)	\$1,286.72	\$66,909.62	\$1,320.18	\$68,649.27	\$1,356.48	\$70,537.13

**Relevant legislation**

[4] Section 225(1)(a) of the IR Act provides that if the instrument applies to 1 or more organisations – the employer and the organisations to which the instrument applies may apply to the Commission to amend the bargaining instrument.

[5] Section 225(2)(a) of the IR Act states that the Commission must approve the amendment if, and must not approve the amendment unless, satisfied:

- (a) the amendment has been approved by—
  - (i) for an amendment mentioned in subsection (1)(b)—the approving parties; or
  - (ii) for any other amendment—a valid majority of the relevant employees at the time; and
- (b) the commission would be required to certify or make the instrument as amended if it were an instrument for which an application for certification or making were made under part 5.

[6] Section 225(5) of the IR Act provides:

The commission may, on application by a person to whom a bargaining instrument applies, amend the instrument—

- (a) to remove ambiguity; or
- (b) to include, omit or amend a term, however described, allowing an employer to stand down an employee; or
- (c) in another way, if—
  - (i) the approving parties have agreed to the amendment; and
  - (ii) the commission is satisfied the amendment does not disadvantage the relevant employees; and

- (iii) the commission is satisfied exceptional circumstances have arisen in the workplace that necessitate the amendment.

[7] Section 225(7) states that "approving parties" means:

- (a) for an instrument that applies to an employer and an employee organisation—the employer and organisation; or
- (b) for another instrument—the employer and a valid majority of the relevant employees at the time.

### **Consideration**

- [8] To amend the Agreement under s 225(2) of the IR Act, I must be satisfied that the amendment has been approved by a valid majority of the relevant employees at the time.<sup>1</sup>
- [9] Council submits that the "amendment of Schedule 1 simply accurately reflects the wages promised in Clause 3.1.1" and "These annual wage increases were previously approved by a valid majority of the relevant employees by staff ballot on 06/06/2022."
- [10] Although the valid majority of relevant employees originally approved the Agreement, that is not the same as approving the amendment. On that basis, I cannot be satisfied that the amendment has been approved by a valid majority of the relevant employees at the time.
- [11] Notwithstanding, s 225(5)(a) of the IR Act empowers the Commission to amend a bargaining instrument "to remove ambiguity". It is clear that the Schedule 1 to the Agreement contains a typographical error as it is at odds with cl 3.1.1 of the Agreement. The typographical error creates ambiguity with respect to the annual wage increase. I am satisfied this ambiguity can be rectified by amending the instrument in the terms proposed.
- [12] Council submits that the amendment of Schedule 1 will result in an accurate reflection of the wages promised in cl 3.1.1 of the Agreement and that those annual wage increases were previously approved by a valid majority of the relevant employees by staff ballot. I am satisfied that the Agreement should be amended to remove ambiguity pursuant to s 225(5)(a) of the IR Act.
- [13] In the alternative, s 225(5)(c) of the IR Act empowers the Commission to amend a bargaining instrument if:
- (i) the approving parties have agreed to the amendment; and
  - (ii) the commission is satisfied the amendment does not disadvantage the relevant employees; and
  - (iii) the commission is satisfied exceptional circumstances have arisen in the workplace that necessitate the amendment.

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<sup>1</sup> *Industrial Relations Act 2016* (Qld) s 225(2)(a)(ii).

[14] The approving parties for the Agreement are:

- Burke Shire Council;
- The Australian Workers' Union of Employees, Queensland;
- Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland;
- Plumbers & Gasfitters Employees' Union Queensland, Union of Employees; and
- Queensland Services, Industrial Union of Employees.

[15] Having regard to the Affidavit of Mr Daniel McKinlay, Chief Executive Officer of Council dated 2 November 2022, I am satisfied that Council, being the employer who is a party to the certified agreement, has agreed to the terms of the amendments. Further, having regard to the Affidavit, I am satisfied that the organisations to which the instrument applies agree to the amendment and the contents of the proposed amended schedule.<sup>2</sup>

[16] I am satisfied that the amendment to Schedule 1 does not disadvantage the relevant employees in any way, but instead reflects the annual wage increases accurately in accordance with cl 3.1.1 of the Agreement as previously certified. I accept Council's submission that the proposed amendment reflects greater wages than those previously certified in Schedule 1.

[17] I am satisfied that a typographical error has been made and this necessitates the amendment in the terms proposed. In light of the totality of factors referred to above, I am satisfied that the Agreement should be amended pursuant to s 225(5)(c) of the IR Act.

[18] Pursuant to s 225(4) of the IR Act, the amendment takes effect when the Commission's approval takes effect, being 25 January 2023.

[19] The application to amend the Agreement is granted.

[20] I make the following order:

1. **The *Burke Shire Council Certified Agreement 2022* is certified as amended and will operate on and from 25 January 2023.**

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<sup>2</sup> Email from Mr J. Maguire of Queensland Services, Industrial Union of Employees dated 10 October 2022; Email from Mr T. Fernandez of Plumbers & Gasfitters Employees' Union Queensland, Union of Employees dated 18 October 2022; Email from Mr R. Cummins of Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland dated 17 October 2022; Email from Mr G. Taylor of The Australian Workers' Union Queensland dated 7 October 2022.