

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Application to amend Whitsunday Regional Council Certified Agreement 2022 [2023]*
QIRC 090

PARTIES: **Whitsunday Regional Council**

AND

The Australian Workers' Union of Employees, Queensland

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

Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland

The Electrical Trades Union of Employees, Queensland

Queensland Services, Industrial Union of Employees

Plumbers and Gasfitters Employees' Union Queensland, Union of Employees

The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees

CASE NO: CB/2023/10

PROCEEDING: Application to amend bargaining instrument

DELIVERED ON: 23 March 2023

MEMBER: McLennan IC

HEARD AT: On the papers

ORDER: **1. The Whitsunday Regional Council Certified Agreement 2022 is certified as amended and will operate on and from 23 March 2023.**

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

LEGISLATION: *Industrial Relations Act 2016* (Qld) s 201, s 225

CASELAW: *In the making of the Whitsunday Regional Council Certified Agreement 2022* [2022] QIRC 476

Reasons for Decision

Background

- [1] On 2 March 2023, the Whitsunday Regional Council (Council) filed an application to amend the *Whitsunday Regional 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 necessary to include the Equal Employment Opportunity provision required under s 201 of the IR Act.
- [3] Council proposes to amend the Agreement by inserting a new clause – cl 9.9 – in cl 9 (Union Related Matters) as follows:

9.9 Equal Employment Opportunity

9.9.1 The parties recognise the importance of maintaining diversity in the workplace, equal remuneration for work of equal value and ensuring that existing practices, that encourage equality of employment and development opportunities, continue and are promoted, during the life of this Agreement. This will include:

- i. Reviewing position descriptions, prior to advertisement, to ensure non-bias/gender neutral language;
- ii. Inclusion of statements during recruitment that Council is an equal opportunity employer;
- iii. Ensuring selection of applicants for vacant positions is conducted in accordance with the law;
- iv. Giving appropriate and meaningful consideration of workplace flexibility or adjustment requests;

- v. Ensuring approval of development opportunities is managed in a fair and equitable manner, irrespective of gender or any other identified attribute under the *Anti-Discrimination Act 1991*.

9.9.2 Council is committed to equal remuneration for work of equal or comparable value.

- [4] Council also proposes to amend the Agreement by updating the table of contents to reflect the inclusion of cl 9.9 as follows:

9.9 EQUAL EMPLOYMENT OPPORTUNITY..... 43

Relevant legislation

- [5] 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.
- [6] 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.

Consideration

- [7] I note that all parties have executed the proposed amended Agreement. On 3 March 2023, the Industrial Registry advised the parties of my intention to determine this matter on the papers based on the materials filed unless any party objected to that course or filed any further material by 4:00pm 10 March 2023. The Commission did not receive a response from any party and therefore I have proceeded to determine this matter on the papers.
- [8] To amend the Agreement under s 225(2)(a)(ii) 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.¹
- [9] Mr Rod Ferguson, Chief Executive Officer of Council affirms within an Affidavit of 14 February 2023 that:
- 4. Council confirms that all the Union parties to the Agreement have agreed to the amendment.
 - 5. Council confirms that all employees covered by the Agreement were provided with a copy of the amended Agreement for their consideration on 20 January 2023, a ballot of the employees was undertaken from 7 February 2023 to 9 February 2023 and the majority of employees who participated in the ballot, voted in favor of the Agreement.

¹ *Industrial Relations Act 2016* (Qld) s 225(2)(a)(ii).

6. The ballot outcome was:

- 235 of 369 employees participated in the ballot;
- 228 of 235 employees voted in favor of the amendment.

[10] Based upon Mr Ferguson's Affidavit of 14 February 2023, the relevant employees covered by the Agreement were provided with a copy of the amended Agreement for consideration. A ballot was subsequently undertaken in which the majority of participants voted in favour of the Agreement. I am satisfied that s 225(2)(a)(ii) of the IR Act has been satisfied.

[11] Other than the inclusion of cl 9.9, the rest of the Agreement remains unchanged. I considered and certified the original Agreement - *In the making of the Whitsunday Regional Council Certified Agreement 2022*.² For reasons outlined therein, I was required to certify the Agreement following an application for certification made under pt 5 of the IR Act.

[12] Section 201 of the IR Act provides:

The commission must be satisfied—

- (a) for a multi-employer agreement or project agreement—the agreement includes information about the way equal remuneration for work of equal or comparable value is implemented, or is to be implemented, in relation to the employees to be covered by the agreement; or
- (b) for any other proposed bargaining instrument—the proposed bargaining instrument contains information about the way the employer has implemented, will implement (if the instrument is certified or made) or is implementing equal remuneration for work of equal or comparable value in relation to the employees to be covered by the agreement.

[13] The proposed amendment to the Agreement ensures compliance with s 201 of the IR Act which commenced after the original ballot of employees had already closed. I accept that s 201 was unknown at the time of bargaining.

[14] I am satisfied that the proposed amendment as extracted at [3] above contains information about the way Council will implement equal remuneration for work of equal or comparable value in relation to the employees covered by the Agreement.

[15] As I am satisfied that s 201(b) of the IR Act has been adhered to and was previously satisfied with the remainder of the Agreement under pt 5 – I consider the Commission would be required to certify the instrument as amended if it were an instrument for which an application for certification were made under pt 5.

[16] Pursuant to s 225(4) of the IR Act, the amendment takes effect when the Commission's approval takes effect, being 23 March 2023.

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

² [2022] QIRC 476.

[18] I make the following order:

- 1. The *Whitsunday Regional Council Certified Agreement 2022* is certified as amended and will operate on and from 23 March 2023.**