

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Application to amend Department of Education Certified Agreement 2022* [2024] QIRC 013

PARTIES: **State of Queensland (Office of Industrial Relations)**

AND

Together Queensland, Industrial Union of Employees

CASE NO: CB/2024/3

PROCEEDING: Application to amend bargaining instrument

DELIVERED ON: 25 January 2024

MEMBER: McLennan IC

HEARD AT: On the papers

ORDER: **1. *The Department of Education Certified Agreement 2022* is certified as amended and will operate on and from 25 January 2024.**

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 11 January 2024, the State of Queensland (Office of Industrial Relations) (the State) filed an application to amend the *Department of Education Certified Agreement 2022* (the Agreement) pursuant to s 225 of the *Industrial Relations Act 2016* (Qld) (the IR Act).
- [2] The State submits that the amendment is to make it clear that the Agreement continues to apply to employees within the Office of Industrial Relations (OIR) and the Office of Racing (OR), in light of their amalgamation with the Department of State Development and Infrastructure (DSDI).
- [3] The State proposes to amend the Agreement by deleting clause 1.2(a)(iv) and inserting the following in lieu thereof:
- (iv) employees employed by the State of Queensland, employed in the Department of Education, and insofar as the Office of Industrial Relations or Office of Racing are concerned including employment in the Department of State Development and Infrastructure, to whom the following awards apply except the employees listed in clause 1.2(b) below:
 - A. *Queensland Public Service Officers and Other Employees Award- State 2015*; and
 - B. *General Employees (Queensland Government Departments) and other Employees Award – State 2015*.
- [4] The Application is made in response to the Departmental Agreements Notice (No. 5) 2023 (the DAN) issued by the Governor in Council on 18 December 2023, which declared those parts of the Department of Education known as OIR and OR, as well as their respective corporate and executive functions, are amalgamated with the DSDI. Employees remain employed by the State of Queensland but are no longer be employed 'in the Department of Education'.
- [5] Accordingly, it calls into question the application of the Agreement to the employees of OIR and OR, as presently clause 1.2 of the Agreement states that the Agreement applies to:
- (iv) employees employed by the State of Queensland, employed in the Department of Education to whom the following awards apply except the employees listed in clause 1.2(b) below:
 - A. *Queensland Public Service Officers and Other Employees Award- State 2015*; and
 - B. *General Employees (Queensland Government Departments) and other Employees Award – State 2015*.

Relevant legislation

- [6] 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.
- [7] 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.
- [8] Section 225(5) of the IR Act states that:
- (5) 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.

Consideration

- [9] On 17 January 2024, 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 on 19 January 2024. OIR and Together Queensland, Industrial Union of Employees emailed the Industrial Registry later that day to advise that they consented to the matter being heard on the papers.
- [10] 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.¹
- [11] The State submits that "Employees in OIR and OR were involved in the negotiation, consultation and ballot process" and "97% of all balloted employees voted in favour of the agreement".

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

- [12] 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.
- [13] Notwithstanding, s 225(5)(a) of the IR Act empowers the Commission to amend a bargaining instrument "to remove ambiguity".
- [14] As it presently reads, the Agreement does not clearly apply to employees of OIR and OR, given that they have now been amalgamated with the DSDI. Clause 1.2 of the Agreement expressly provides that the Agreement applies to "employees employed by the State of Queensland, employed in the Department of Education to whom the following awards apply except the employees listed in clause 1.2(b) below ...".
- [15] I am satisfied that the proposed amendment removes ambiguity by making it clear that the Agreement applies to employees within OIR and OR, which was the intention of the parties upon certification of the Agreement on 24 May 2023. I am satisfied that the Agreement should be amended to remove ambiguity pursuant to s 225(5)(a) of the IR Act.
- [16] 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.
- [17] The approving parties for the Agreement are:
- State of Queensland (Department of Education); and
 - Together Queensland, Industrial Union of Employees.
- [18] Having regard to the Affidavit of Ms Lauren Gribbin, A/Executive Director, Industrial Relations, affirmed 10 January 2024, I am satisfied that the State, being the employer who is a party to the certified agreement, has agreed to the amendment. Further, having regard to Exhibit A to the Affidavit of Ms Lauren Gribbin, I am satisfied that Together Queensland, Industrial Union of Employees, the organisation to which the Agreement applies, agrees to the proposed amendment.
- [19] I note in the Affidavit of Ms Lauren Gribbin, she provides:

21. The DoE CA contains particular terms and conditions which were negotiated for specific application to OIR in part 20, as well as other beneficial provisions (e.g. salary increases and Cost of Living Adjustment payment).
22. Employees in OIR and OR were involved in the negotiation, consultation and ballot process for the DoE CA.
- ...
26. At present, if it was considered that the employer ceased to be bound by the DoA CA in respect of OIR and OR employees as a consequence of the amalgamation with DSDI, the relevant employees would be disadvantaged in terms of the beneficial provisions of the agreement that apply generally (e.g. salary increases and cost of living payments) as well as the provisions negotiated for specific application to OIR (i.e. Part 20 Office of Industrial Relations).

[20] I agree that it would disadvantage to employees if OIR and OR ceased to be covered by the Agreement due to the amalgamation with DSDI, particularly given the terms and conditions negotiated specifically for these employees. Therefore, I am satisfied that the amendment does not disadvantage the relevant employees in any way, rather, it ensures they remain entitled to the benefits under the Agreement.

[21] I am satisfied that exceptional circumstances have arisen which necessitate the amendment under s 225(5)(c) of the IR Act, following the Machinery of Government changes.

[22] Pursuant to s 225(4) of the IR Act, the amendment takes effect when the Commission's approval takes effect, being 25 January 2024.

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

[24] I make the following order:

1. **The *Department of Education Certified Agreement 2022* is certified as amended and will operate on and from 25 January 2024.**