

# QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Application to amend Child Safety and Youth Justice Certified Agreement 2023 [2024] QIRC 054*

PARTIES: **State of Queensland (Department of Child Safety, Senior and Disability Services and the Department of Youth Justice)**  
(Applicant)

AND

**Together Queensland, Industrial Union of Employees**  
(First Respondent)

AND

**The Australian Workers' Union of Employees, Queensland**  
(Second Respondent)

AND

**United Workers' Union, Industrial Union of Employees, Queensland**  
(Third Respondent)

CASE NO: CB/2024/8

PROCEEDING: Application to amend certified agreement

DELIVERED ON: 1 March 2024

MEMBER: Hartigan DP

HEARD AT: On the papers

ORDER: ***The Child Safety and Youth Justice Certified Agreement 2023 is amended to include the salary schedule for the Operational Stream of the General Employees (Queensland Government Departments) and Other Employees Award – State 2015 within Appendix 1.***

CATCHWORDS: INDUSTRIAL LAW – COLLECTIVE BARGAINING – application to amend certified agreement – requirements for amendment – agreement amended.

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

## Reasons for Decision

### Introduction

- [1] The State of Queensland (Department of Child Safety, Senior and Disability Services and the Department of Youth Justice) ('the Department') has applied, pursuant to s 225(5) of the *Industrial Relations Act 2016 (Qld)* ('the IR Act'), to amend the *Child Safety and Youth Justice Certified Agreement 2023* ('the Agreement').
- [2] The Department submits that the salary schedule for the Operational Stream of the *General Employees (Queensland Government Departments) and Other Employees Award – State 2015* ('GE Award') was erroneously omitted from the Agreement at Appendix 1 'Salary Schedules' ('Appendix 1'). The Department notes that the salaries of employees covered by the other modern award referenced by the Agreement, the *Queensland Public Service Officers and Other Employees Award – State 2015*, are included at Appendix 1.
- [3] Accordingly, the Department seeks to amend the Agreement to publish the salary schedule for the Operational Stream of the GE Award at Appendix 1.<sup>1</sup>
- [4] The named parties to the Agreement are the Departments and the following employee organisations:
- (a) Together Queensland, Industrial Union of Employees;
  - (b) The Australian Workers' Union of Employees, Queensland; and
  - (c) United Workers' Union, Industrial Union of Employees, Queensland.
- ('the Respondents')

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<sup>1</sup> In the terms contained in the Affidavit of Arthur O'Brien filed on 1 February 2024 at Exhibit A, Attachment A, pg. 37.

- [5] The Respondents each support the application to amend the Agreement and the submissions of the Department.

### **Relevant terms of the Agreement**

- [6] The Department has summarised the relevant provisions of the Agreement as follows:
3. Clause 1.2(1)(b) of the CSYJ Agreement provides that it applies inter alia to 'All employees of ... the Department of Youth Justice who are covered by the ...General Employees (*Queensland Government Departments*) and *Other Employees Award - State 2015..*'
  4. Clause 2.1(1) provides for the wage increase applicable to employees covered by the CSYJ Agreement. Specifically, that the first increase on 1 August 2023 of 4% is applied to the last agreement rates as contained in the *Child Safety and Youth Justice Certified Agreement 2021*; the second increase on 1 August 2024 of 4% is applied to the 1 August 2023 agreement rates; and the third increase on 1 August 2025 of 3% is applied to the 1 August 2024 agreement rates.
  5. Clause 2.1(2) states that the salary schedules are set out in Appendix 1 of the CSYJ Agreement.
  6. Appendix 1 of the CSYJ Agreement lists an index of contents that includes the General Employees (Queensland Government Departments) and Other Employees Award - State 2015 (GE Award).
  7. The actual salary schedule (in table form) for the GE Award has been inadvertently omitted from the balloted and Certified Agreement.
  8. Approximately 79 employees are engaged under the CSYJ Agreement and the GE Award.
  9. These employees are operational employees employed by the Department of Youth Justice in roles such as Cleaners, Cleaner/Grounds person, Facilities and Grounds Officer and Relief Centre Manager, and range in pay classification levels from 002 to 004.

- [7] It is apparent from the above, that the terms of the Agreement are ambiguous insofar as Appendix 1 of the Agreement lists the inclusion of the GE Award but the salary schedule does not include the salary for those covered by the GE Award.

### **Relevant Legislation**

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

[9] Section 225(2) of the IR Act provides 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.

[10] However, s 225(5) of the IR Act provides a mechanism for amendments to be made in limited circumstances as follows:

- (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—
    - (a) the approving parties have agreed to the amendment; and
    - (b) (ii) the commission is satisfied the amendment does not disadvantage the relevant employees; and
    - (c) (iii) the commission is satisfied exceptional circumstances have arisen in the workplace that necessitate the amendment.

[11] The Application to amend is made in reliance on s 225(5)(a) of the IR Act, or in the alternative, s 225(5)(c).

## **Consideration**

[12] The parties claim that the need for the amendment arises because an ambiguity has resulted from the omission of a salary schedule in the Agreement.

[13] Relevantly, it is contended that the ambiguity in the Agreement has arisen as follows:

- a. The CSYJ agreement contains provisions that refer to the GE Award salary schedule (clause 2.1(2) and Appendix 1). Ambiguity arises as a consequence of the salary schedules being omitted from the instrument particularly as they were available in the predecessor Child Safety and Youth Justice Certified Agreement 2021. This omission is administrative in nature.
- b. The parties to the instrument have discussed the best way to rectify this in the interests of the relevant employees. The parties determined to make an application to amend the CSYJ Agreement to include the relevant GE Award salary schedules.
- c. This ambiguity can be rectified by amending the instrument and provide certainty and clarity of wage rates for employees by accurately reflecting the annual wages in accordance with clause 2.1(1) of the CSYJ Agreement.

- d. The amendment reflects the intention of the parties to provide greater wages than those in the predecessor Child Safety and Youth Justice Certified Agreement 2021 (previously approved by a valid majority of the relevant employees balloted) and merely displays the effect of clause 2.1 in the CSYJ Agreement (also approved by a valid majority of the relevant employees balloted).
- e. The amendments will ensure current and existing entitlements are readily available to employees covered by the CSYJ Agreement.

[14] I accept, on the basis of the information relied on, that an ambiguity has arisen from the omission of the salary schedule from the Agreement. The parties are in agreement that the salary schedule sets out the wage increases contained in clause 2.1 of the Agreement and does not itself provide an additional entitlement.

[15] The effect of the omission of the salary schedule is that the salary rates for those covered by the GE Award are not set out in the Agreement. Consequently, I consider that the omission of the salary schedule creates an ambiguity. Accordingly, I am satisfied that the Agreement may be amended pursuant to s 225(5)(a) of the IR Act.

[16] It follows, that it is unnecessary for me to consider the alternative application made in reliance on s 225(5)(c) of the IR Act.

[17] For the foregoing reasons, the application to amend the Agreement is granted.

### **Order**

[18] I make the following order:

***The Child Safety and Youth Justice Certified Agreement 2023 is amended to include the salary schedule for the Operational Stream of the General Employees (Queensland Government Departments) and Other Employees Award – State 2015 within Appendix 1.***