QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*Queensland Council of Unions v State of Queensland (Office of Industrial Relations*) *and Anor (Casual Loading General Ruling 2024)* [2024] QIRC 201
PARTIES:	**Queensland Council of Unions** (Applicant) v **State of Queensland (Office of Industrial Relations)** (First Respondent) And **Local Government Association of Queensland Ltd** (Second Respondent)
CASE NO.:	B/2024/44
PROCEEDING:	Application for General Ruling
DELIVERED ON:	16 August 2024
HEARING DATE:	7 August 2024
MEMBERS:	Merrell DP Pratt IC Gazenbeek IC
HEARD AT:	Brisbane
CATCHWORDS:	INDUSTRIAL LAW – QUEENSLAND – GENERAL EMPLOYMENT CONDITIONS – WAGES AND REMUNERATION – where the Queensland Council of Unions applied, pursuant to s 458 of the *Industrial Relations Act 2016*, for a General Ruling that the casual loading for employees covered by industrial instruments under the *Industrial Relations Act 2016* be no less than 25% – where the Respondents agree with the making of the General Ruling as sought – whether making the General Ruling as sought is consistent with the main purpose of the *Industrial Relations Act 2016* – whether other discretionary considerations in determining to

	make the General Ruling support the making of the General Ruling as sought including improvements in the employment conditions for non-casual employees since the last review of the casual loading by the Queensland Industrial Relations Commission and parity with national system casual employees who work in Queensland – all relevant considerations point to the discretion of the Queensland Industrial Relations Commission being exercised – General Ruling as sought to be made
LEGISLATION:	*Industrial Relations Act 1999*, s 287
	Industrial Relations Act 2016, s 3, s 4, s 9, s 141, s 143, s 147, s 225, s 458, s 459, s 460, s 531 and sch 1
	Workplace Relations Act 1996, s 576C
CASES:	*Annual Wage Review 2023-2024* [2024] FWCFB 3500
	Declaration of General Ruling (State Wage Case 2022) [2022] QIRC 340
	Queensland Council of Unions v Crown and Ors [2001] QIRComm 43; (2001) 166 QGIG 389
	Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited and Ors [2003] QIRComm 383; (2003) 173 QGIG 1417
	Re Metal, Engineering and Associated Industries Award, 1988 – Part 1 [2000] AIRC 722; (2000) 110 IR 247
	Re Request from the Minister for Employment and Workplace Relations – 28 March 2008 [2008] AIRCFB 1000; (2008) 177 IR 364
APPEARANCES:	Mr N. Tosh for the Queensland Council of Unions.
	Ms E. Bristow and Mr B. Feldman for the State of Queensland (Office of Industrial Relations).
	Ms E. Ackland for the Local Government Association of Queensland Ltd.

Reasons for Decision

Introduction

[1] By application filed on 20 May 2024, the Queensland Council of Unions ('the QCU') applied, pursuant to s 458(1)(a) of the *Industrial Relations Act 2016* ('the Act'), for the following decision:

> That the Commission declare by way of General Ruling that:
>
> a) the casual loading for employees covered by the Industrial Relations Act 2016 shall be no less than 25%; and
>
> b) industrial instruments with a casual loading in excess of 25% are not affected by the decision; and
>
> c) the operative date of the decision is 1 July 2024, or the date any relevant order is made by the Commission (whichever is later).

[2] When the QCU's application was first mentioned before the Full Bench on 12 July 2024, the State of Queensland (Office of Industrial Relations) ('the State') submitted that it consented to the QCU's application. On the other hand, while the Local Government Association of Queensland Ltd ('LGAQ') did not oppose the QCU's application, it sought that the increase to the casual loading rate be phased-in given the financial circumstances of some of its members. The QCU and the LGAQ also indicated that they were open to further discussions about the issue raised by the LGAQ.

[3] At that mention we did not, as proposed by the parties, agree to making an interim order increasing the casual loading rate to no less than 25% only in respect of casual employees employed by the State. Instead, the QCU and the LGAQ adopted our proposal that the issue in dispute between them about the QCU's application be referred to another member of the Commission for conciliation and that, if such conciliation failed, we would then hear and determine all matters in one hearing.

[4] Subsequently, Vice President O'Connor was scheduled to conciliate the issue in dispute between the QCU and the LGAQ. However, by email received from the parties on 24 July 2024, we were informed that those issues in dispute had been resolved. Accordingly, on 7 August 2024, we heard submissions from the parties in support of the QCU's application.

[5] The question for our determination is whether we should grant the QCU's application and make the General Ruling it seeks in respect of the rate of casual loading.

[6] For the reasons that follow, we will, pursuant to s 458(1)(a) of the Act, make the General Ruling as sought by the QCU's application.

Relevant history

[7] In 2000, in *Re Metal, Engineering and Associated Industries Award, 1988 – Part 1*,[1] a Full Bench of the Australian Industrial Relations Commission increased the casual

[1] [2000] AIRC 722; (2000) 110 IR 247 (Munro J, Polites SDP and Lawson C).

loading rate in the *Metal, Engineering and Associated Industries Award, 1988* from 20% to 25%. In coming to that decision, the Full Bench relevantly stated:[2]

> **14. Conclusion and determination of casual loading**
>
> 196 For the reasons we have given in the preceding sections, we are satisfied that paid leave; long service leave; and a component covering differential entitlement to notice of termination of employment and employment by the hour effects, should constitute the main components to be assessed in determining casual loading for the Award.
>
> 197 In the table below, we have attempted a comparison of the relative annual costs to the employer. It is expressed as working days paid for. It covers three main types of ordinary hours, day work employment for certain components. We have included in the calculation also a progressive ratio of what we estimate to be the relative advantage of a full-time worker in days paid for over a casual employee.
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> ...
>
> 198 That form of calculation is but one of a number which might be used to demonstrate points and costing effects or estimates. For the reasons we have given, we are not persuaded that an exact or precise quantification of different components should be welded on to the determination of the casual rate loading. We are satisfied that the existing loading is substantially exhausted in compensating for the potential liability for paid leave entitlements applicable to other relevant types of employment. The changed access to some forms of personal leave since the last adjustment in 1974, and the substantially differential access to notice of termination for weekly (now full-time) employees in conjunction with the reintroduction of an employment by the hour effect for casual employees, justify some additional loading. Our view in that respect is reinforced by what we have broadly categorised as the notice of termination and employment by the hour effects. Even a minimal quantification of an addition to the loading for that component would be sufficient to make out a relatively compelling case for an increase to the existing level of the loading.
>
> 199 Having regard to all relevant circumstances applying to the loadings for casual employees under the Award, we are satisfied that a special case has been sufficiently made out for an adjustment of the casual rate loading to 25 per cent. An adjustment to that level is not inconsistent with relevant comparable awards having regard to the circumstances of the metals and manufacturing industry and to the wide and diverse use of casual employment in it.
>
> 200 We are not persuaded that we should refrain from granting an increase to the loading because of any potential to thereby increase recourse to other types of employment including specific term employment. Such movements are to be expected from time to time. We have sought in our detailed reasoning in this case to develop a rationale about casual employment and its particular incidents that may be capable of application, with such changes as are necessary to other types of employment. In setting each condition, we have given weight to the desirability of not producing different standards or reflecting preference for one type of employment over another. Our reasoning is founded upon the view that provision for a type of employment should open the way to its use. If a differential incident is justified, it may need to be provided. Unless it is, the broad principle we have sought to apply is to attempt to translate the standard conditions of the Award to achieve a fair and reasonable balance between the main types of employment.

[8] The last time the Queensland Industrial Relations Commission, by way of a General Ruling, reviewed the loading for casual employees was in 2001. That decision is reported as *Queensland Council of Unions v Crown and Ors* ('the *2001 Casual Loading General*

[2] Footnote omitted.

Ruling').[3] At that time, the Commission had power to make General Rulings pursuant to s 287 of the *Industrial Relations Act 1999.* In that matter, the QCU and the Australian Workers' Union of Employees, Queensland sought a General Ruling that:

> [T]hose Awards and Industrial Agreements which prescribe loading for casual employees expressed as a percentage of less than 28.5 per centum should be varied so as to increase such percentage loading to 28.5 per centum as from (the specific date).

[9] In determining to make a General Ruling that phased-in an increase to the casual loading rate to 23%, the Full Bench gave a history of casual loading within the Queensland jurisdiction:

> **Historical Perspective of Casual Loading within the Queensland Jurisdiction according to the QCU/AWU submissions**
>
> In an application made by the AWU during 1952 to the Industrial Court of Queensland, for increases in casual allowances (37 QGIG 602, September 1952) the Court stated:-
>
> > "Obviously these rates were originally fixed at a higher figure than the ordinary rates applying to the types of employment governed by them to enable the casual worker to earn an additional sum during a limited period of employment as compensation for the lack of regular employment. It is difficult, however, to ascertain to what extent the casual loading, as it were, was intended to compensate this type of employee".
>
> Further, in *Bag-Making Award – South-Eastern Division* (37 QGIG 752 of November 1952) the Industrial Court, in considering an application to delete the "Male Adult" casual rate and insert a general 12½% loading, stated:-
>
> > "In a recent judgement dealing with, *inter alia*, casual rates under the Harbour Boards Award – State, the Court suggested that matters to be considered in arriving at proper rates for casual workers were (a) type of work, (b) incidence of casualness and (c) the degree of work to be performed to be considered a casual. Of these three matters, I think by far the most important is the incidence of casual work. In my view the lesser amount of employment for casual workers there is available in any particular calling, the greater the casual rate should be, and vice versa. Of course, there must be a limit placed on the rates, as the fixation of such a rate as would enable a casual worker to earn more than a regular worker must be guarded against. In the earlier days of arbitration when rates of this description were being fixed, such present-day conditions as annual leave, payment for statutory holidays not worked and sick leave were either in their infancy or were not contemplated. I think in these days such matters should be considered in fixing casual rates as otherwise there is the danger that the casual worker will be inadvertently subjected to a degree of industrial injustices. The chief difficulty is to determine to what extent such matters should be considered. I think it is reasonable and in accordance with modern trends of industrial relations that a good deal of weight should be given to the proposition that a casual rate should include some amount to compensate a casual worker for the loss of annual leave and payment for statutory holidays. It is assumed that daily and hourly rates in Awards do contain a loading in respect of these matters, but there is no evidence to show what is the amount of such loading. The question as to whether the casual rate should include a loading in respect of sick leave presents greater difficulty. Payment for sick leave is not necessarily automatic. Any particular worker may not draw sick leave payment in years of service and, *prima facie*, to load the casual rate with an amount in this respect may be regarded as putting the casual worker in a better position than a worker who is in regular employment. On the other hand it seems to be a reasonable assumption, corroborated to some extent by positive statements made frequently in Court in the past and not denied, that employers' costs include an amount based upon hypothetical sick leave payments. On the whole, I can see no injustice in loading the casual rate on this occasion.".
>
> A number of applications were heard by the Commission after this period seeking to reduce the then existing casual loading. Those cases were unsuccessful. In 1964, a claim was lodged by the AWU to vary the "policy" of the Commission in relation to casual loading. The increase sought was an extra 2½% loading, thereby establishing an overall casual rate of 15%. On that occasion, an

[3] [2001] QIRComm 43; (2001) 166 QGIG 389 ('the *2001 Casual Loading General Ruling*'), 390 (Commissioner Bechly, Commissioner Swan and Commissioner Brown).

attempt was made to identify the criteria which should be considered in determining an appropriate casual loading. The criteria suggested were annual leave, public holidays, lost time and sick leave.

After this adjustment, casual leave loading increased to 19% and then, in a number of cases, to 20% as a consequence of a series of decisions by the Commission.

Within the Queensland jurisdiction, there are a number of Awards which contain a casual loading rate higher than the standard 19%. These include:-

Retail Industry Interim Award - State ……..22%
Accommodation Industry (Other Than Hotels) Award - South-Eastern …… 25%
Division and Boarding House Employees Award - State
(Excluding South–East Queensland)
Club Etc. Employees' Award – South East Queensland ……..25%
Club Employees' Award - State (Excluding South-East Queensland) ……..…..50%
Clothing Trades Award (both Awards) …….33 & 1/3%
Building Construction Industry Award - State ……20%[4]

[10] The *2001 Casual Loading General Ruling* was made at a time when the Queensland Industrial Relations Commission, pursuant to the *Industrial Relations Act 1999*, still had an industrial jurisdiction over certain private sector employers and employees in Queensland. In making its decision, the Full Bench relevantly stated:

In reaching this decision and the final decision as to quantum of loading, we have taken into account that a variety of loadings have been deemed to be appropriate in a variety of Awards. No specific detail is before us as to why the particular loadings have been set. We accept that contained in the loadings are elements for annual leave, sick leave, public holidays and other paid entitlements accruing to permanent employees. As well, included in each of the allowances is an element relating to lost time in particular callings, referred to in the *Bag-Making Award - South-Eastern Division* aforementioned and in the decision of Court Members Dwyer and Harvey (37 QGIG 602), and other decisions of the Commission.

The lost time element obviously varies for different industries and industry sectors and quite often differs from employer to employer within the one industry.

Whilst it is acknowledged that this element, along with other elements, has not been specifically quantified in past decisions, it is a relevant element which has not been addressed in any or sufficient detail in this case to assist those applicants who seek to reduce the loading which is now before us.

We also take into account that since the last time this allowance was set in 1974 there have been a number of advances in employment conditions prescribed by way of Policy determination or Award prescription of this Commission which are not available to casual employees. We cite, for example, the Termination, Change and Redundancy Policy of this Commission which excludes casual employees.

We also do not propose to accept the Government's application for a 1% increase in casual loading. We are mindful of the Government's economic estimates and costing of the claims of the Unions were they to be granted. In fact, that acknowledgment does form an appropriate part of our reasoning in reaching our decision. However, we believe the quantum proposed by the Government does not adequately address the clear changes which have occurred in the area of casual employment.

Given that we do not attempt to establish and utilise a precise formula for determining an appropriate casual loading, we propose to consider the Unions' applications in the following manner.

On the question of "Foregone Leave Loading", we would state that we believe this to be a component of the Unions' claim which should be accepted as claimed. It is a matter of fact that,

[4] The *2001 Casual Loading General Ruling* (n 3), 390.

> across Awards in this Commission, a minimum standard of 17.5% leave loading applies to employees other than casuals. On the material before us, we can see no reason why this element of the claim should be rejected. It would seem to us that it naturally follows that since casual employees are compensated for the loss of annual leave, so too should they be for that other element of annual leave, leave loading. We note, from earlier decisions of this Commission, that it was clear on the question of payment of Leave Loading that this component was previously refused on the basis of "lack of information" around the question.
>
> The matter of "Foregone Bereavement Leave" is more problematic for us. Bereavement Leave is common to Awards of this Commission. The frequency of its access to the non-casual workforce is unknown to us with any precision. We should not stumble over that point, however, as it has already been established within this jurisdiction that Bereavement Leave has been warranted. The argument is put to us that Bereavement Leave is similar to Sick Leave which is included for consideration in the casual loading. From the evidence before us, it is our view that this component should be included within the casual loading rate. Because of the relatively extended nature of casual employment in this current environment, it is more likely that casual employees would have the same need to access this type of leave as would non-casual employees.
>
> For similarly based reasons as above, we would include within the loading an element for increased notice of termination provided in the Legislation for non-casual employees but take into account that inherent in the existing loading is a component which recognises that no notice of termination is given to casuals.[5]

[11] In 2008, a Full Bench of the Australian Industrial Relations Commission, in considering an award modernisation request made by the Minister for Employment and Workplace Relations pursuant to s 576C of the *Workplace Relations Act 1996*, relevantly stated:[6]

> 48 There is great variation in the casual loadings in NAPSAs and federal awards. In some cases the situation is complicated by the fact that casuals receive an annual leave payment, usually through an additional loading of one twelfth, although in most cases casuals do not receive annual leave payments. To take some examples, a casual loading of 25 per cent is common throughout the manufacturing industry, casual loadings in the retail industry vary from 15 per cent to 25 per cent. A loading of 25 per cent is very common, although not universal, throughout the hospitality industry. A number of pre-reform awards currently provide for a 33.3 per cent loading and higher when the annual leave payment is taken into account. It seems to us to be desirable to standardise provisions to apply to casuals where it is practicable to do so to avoid claims in the future based on unjustified differences in loadings. We appreciate that there are casual employees in some industries in some States receiving loadings less than 25 per cent and we understand that employers of those employees will experience an increase in labour costs if the loading is standardised to 25 per cent. Equally, there will be reductions in labour costs where the loading, including the annual leave loading where it applies, exceeds 25 per cent currently.
>
> 49 In 2000 a Full Bench of this Commission considered the level of the casual loading in the *Re Metal, Engineering and Associated Industries Award 1998 (the Metal industry award)*. The Bench increased the casual loading in the award to 25 per cent. The decision contains full reasons for adopting a loading at that level. The same loading was later adopted by Full Benches in the pastoral industry. It has also been adopted in a number of other awards. Although the decisions in these cases were based on the circumstances of the industries concerned, we consider that the reasoning in that case is generally sound and that the 25 per cent loading is sufficiently common to qualify as a minimum standard.
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> 50 In all the circumstances we have decided to confirm our earlier indication that we would adopt a standard casual loading of 25 per cent. We make it clear that the loading will

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[5] The *2001 Casual Loading General Ruling* (n 3), 397-398.

[6] *Re Request from the Minister for Employment and Workplace Relations – 28 March 2008* [2008] AIRCFB 1000; (2008) 177 IR 364 (Giudice J, President, Lawler and Watson VPP, Watson, Harrison and Acton SDPP and Smith C) (Citations omitted).

> compensate for annual leave and there will be no additional payment in that respect. Also, as a general rule, where penalties apply the penalties and the casual loading are both to be calculated on the ordinary time rate.

[12] In the *Annual Wage Review 2023-2024*, the Full Bench of the Fair Work Commission left the casual loading for award/agreement free employees at 25%.[7]

[13] In 2021, the Queensland government announced a five year review of the Act. That review was undertaken by Mr John Thompson, a retired Member of the Queensland Industrial Relations Commission, and Ms Linda Lavarch, a former Queensland Attorney-General. Their report was released on 7 February 2022 ('the five year review report'). The rate of casual loading was one of the matters reviewed. Mr Thompson and Ms Lavarch relevantly stated[8] in the five year review report:

> **Casual loading**
>
> There is, however, the matter of the 'casual loading' rate. This refers to the multiplier applied to the base rate of pay received by a casual employee. The casual loading for employees in the national system is set by the FWC, and under the FW Act must be expressed as a percentage. It is presently 25 per cent, having been first set at that rate in the Metals Award in 2000, and gradually applied to other awards subsequently.
>
> In the Queensland jurisdiction, the QIRC determines the casual loading, and can do so in response to an application or in some instances at its own initiative. The IR Act does not specify the existence of a casual loading in the QES. Nor does it specify any conditions for the form or content of the casual loading. In practice, the letting [sic] of casual loading rates takes into account paid entitlements that casual employees do not receive (but which 'permanent' employees do). These foregone entitlements have been taken to include different types of leave and advance notice of the employment arrangement ending. The current level of the casual loading in most Queensland awards is 23 per cent, based on a decision in 2001.
>
> Other jurisdictions vary in their treatment of casual employees. In all with a state system, the casual loading rate is a matter for the relevant state tribunal. In Western Australia by law that loading must be no less than 20 per cent, in other states a minimum loading is not legislatively specified. The vast majority of casual employees, however, are in the federal jurisdiction.
>
> Three employee organisations made submissions recommending that the casual loading rate in Queensland awards be increased to 25 per cent. Submissions proposed that this could be achieved by way of an application to the QIRC for a general ruling by the bargaining parties, or via codification in the QES.
>
> With casual employment widely acknowledged as an insecure form of employment, it would be equitable for those employed under such arrangements to be entitled to the same loading under the Queensland state system as applies to employees in the federal system.
>
> **Recommendation:**
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> **27. That casual loading for employees covered by the *Industrial Relations Act 2016* be increased from the present rate of 23 per cent to 25 per cent, which aligns with the casual loading rate applicable to employees in the National Employment System. This should be achieved through a registered organisation or a state peak council making the relevant applications in the Queensland Industrial Relations Commission, with such applications supported by the Queensland Government.**

[7] *Annual Wage Review 2023-2024* [2024] FWCFB 3500, [152].
[8] Footnote omitted.

The relevant provisions of the Act

[14] Section 3 of the Act provides:

> **3 Main purpose of Act**
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> The main purpose of this Act is to provide for a framework for cooperative industrial relations that–
>
> (a) is fair and balanced; and
>
> (b) supports the delivery of high quality services, economic prosperity and social justice for Queenslanders.

[15] Section 4 of the Act relevantly provides:

> **4 How main purpose is primarily achieved**
>
> The main purpose of this Act is to be achieved primarily by–
>
> …
>
> (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community;

[16] Chapter 11, pt 2, div 4, sub-div 1 of the Act deals with the power of the Full Bench of the Commission to make general rulings. It relevantly provides:

> **Subdivision 1 General rulings**
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> **458 Power to make general rulings**
>
> (1) The full bench may make general rulings about–
>
> (a) an industrial matter for employees bound by an industrial instrument if multiple inquiries into the same matter are likely; or
>
> (b) a Queensland minimum wage for all employees.
>
> (2) The full bench must ensure a general ruling about a Queensland minimum wage for all employees is made at least once each year.
>
> (3) Before conducting a hearing about the ruling, the full bench must –
>
> (a) give reasonable notice, in the way it considers appropriate, of its intention to conduct the hearing; and
>
> (b) give all interested persons an opportunity to be heard.
>
> **459 Requirements for general rulings**
>
> (1) A ruling –
>
> (a) must state a date (the ***stated date***) on and from which it has effect; and
>
> (b) has effect as a decision of the full bench on and from the stated date.

(2) A ruling may exclude from the operation of any of its provisions–

(a) a class of employers or employees; or

(b) employers or employees in a particular locality; or

(c) an industrial instrument or part of an industrial instrument.

(3) As soon as practicable after making a ruling, the registrar must publish a notice of the ruling and the stated date on the QIRC website.

(4) The notice, on and from the stated date, replaces a notice of a ruling on the same subject matter previously published.

(5) The ruling continues in force until the end of the day immediately before the stated date for a subsequent ruling on the same subject matter.

…

460 Relationship with industrial instruments

(1) If a ruling takes effect while an industrial instrument, other than an industrial instrument or part of an industrial instrument excluded under section 459(2), is in force–

(a) the industrial instrument is taken to be amended so it is consistent with the ruling on and from the stated date; and

(b) the amendment has effect as an industrial instrument on and from the stated date.

(2) The registrar may amend an industrial instrument taken to be amended under subsection (1) as the registrar considers appropriate–

(a) on an application made under the rules; or

(b) on the registrar's own initiative.

(3) This section applies despite chapter 3.

[17] Section 9 of the Act defines an 'industrial matter.' Section 9(3) of the Act provides that without limiting s 9(1) or affecting s 9(2) of the Act, '… a matter is an industrial matter if it relates to a matter mentioned in schedule 1.' Schedule 1 to the Act sets out such matters and item 1 provides:

1 wages, allowances or remuneration of persons employed, or to be employed, during ordinary working hours, on overtime, on special work or on public holidays

The parties' submissions

The QCU

[18] By way of overview, the QCU submitted that:

- its application has been filed with the intention of implementing the recommendation made from the five year review report and its application is consented to by the State and the LGAQ;

- its application meets the main purpose of the Act and the requirements for modern awards[9] by way of ensuring that wages and employment conditions provide fair standards in relation to living standards prevailing in the community;

- given the nature of the relevant recommendation from the five year review report, multiple inquiries into the increase of the casual loading are likely, namely applications to vary modern awards under section 147(2)(b) of the Act and applications to amend certified agreements under section 225 of the Act and, therefore, the Full Bench's power under section 458(l)(a) of the Act is enlivened;

- pursuant to section 460(1) of the Act, should the General Ruling be made, an industrial instrument in force will be taken to be amended so that it is consistent with the ruling on and from the stated date of the ruling; and

- an 'industrial instrument' includes an award, a certified agreement and an arbitration determination as defined in Schedule 5 of the Act.

[19] The QCU further submitted that:[10]

> 29. Therefore, the QCU submits that the key effect of the relevant statutory provisions is to require that the wages and employment conditions for casual employees remain relevant in relation to matters including, *inter alia*, fair standards prevailing in the community.
>
> 30. However, they have fallen behind with respect to the casual loading and comparatively to the standards enjoyed by national system employees engaged in similar casual work.
>
> 31. The majority of casual employees in Queensland are national system employees covered by industrial instruments of the Fair Work Commission which provide a 25% casual loading, and it is fair and just for state system employees engaged in similar casual work to receive a loading of equal value.
>
> 32. Relevantly, with respect to the casual loading prescribed in modern awards, there are also two different rates of casual loading.
>
> 33. The vast majority of casual employees in the state are paid a 23% loading, but casual employees covered by the *Parents and Citizens Associations Award - State 2016* and Administrative, clerical, technical, professional, community service, supervisory and managerial services casual employees covered by the *Queensland Local Government Industry (Stream A) Award - State 2017* are paid a 25% loading.
>
> 34. In effect, there are currently inequities and anomalies between awards and within an existing award.
>
> 35. A 23% casual loading does not reflect a fair standard in comparison to the prevailing casual rates for employees performing similar casual work under federal awards or other employees covered by state awards.

[20] In terms of determining the casual loading rate, the QCU submitted:

- the rationale for the previous increase granted by this Commission, from 19% to 23%, by the *2001 Casual Loading General Ruling*, was based on compensating

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[9] *Industrial Relations Act 2016*, s 141(1)(a) and s 143(1)(i).
[10] Footnote omitted.

casual employees for foregone leave loading, bereavement leave, and a minimum notice of one week;

- those matters reflected improvements in the employment conditions applicable to non-casual employees covered by the state system since the last time the casual loading was determined in 1974;

- since the 2001 *Casual Loading General Ruling*, there have been further improvements to the employment conditions applicable to non-casual employees covered by the State system, with no increase in the loading for casual employees to compensate for the foregone benefits; and

- those improvements include:

  - the 2003 extension of the maximum scale of redundancy pay from 8 weeks to 16 weeks;[11]

  - the 2013 increase of sick leave entitlement from 8 days to 10 days arising from the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*; and

  - the introduction of various entitlements under the Queensland Employment Standards that aligned with equivalent standards under the National Employment Standards in the *Fair Work Act 2009* to ensure that workers in the state system had access to equal standards in comparison to the standards for workers in the federal jurisdiction.

[21] By way of conclusion, the QCU submitted:

- its application seeks to remedy the absence of increase in the loading for casual employees to compensate for foregone benefits by increasing the casual loading to 25% for all casual employees;

- its application is consistent with, furthers the objectives of, and does not offend the Act;

- the impact of its present application will not be as significant as in 2001 because it is confined to the Queensland public sector and local government sector;

- the interests of the persons immediately concerned are all represented by the parties to this proceeding, and there are no objections to its application and such matters ought to relevantly guide the decision of the Commission pursuant to s 531(3) of the Act; and

- for those reasons, it is fair and just for the Commission to increase the casual loading rate to 25% for employees covered by the Act.

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[11] *Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers & Ors* [2003] QIRComm 383; (2003) 173 QGIG 1417.

The State and the LGAQ

[22] The State and the LGAQ supported the submissions made by the QCU.

The General Ruling sought should be made

[23] In our view, the General Ruling as sought by the QCU should be made.

[24] This is for four reasons.

[25] First, there is no doubt that the issue of the loading to be paid to casual employees meets the description of '… an industrial matter for employees bound by an industrial instrument' within the meaning of s 458(1)(a) of the Act.

[26] Secondly, we are persuaded by the QCU's submission that the discretion of the Full Bench, contained in s 458(1)(a) of the Act, is enlivened on the basis that multiple enquiries about the rate of casual loading, having regard to the recommendation made in the five year review report, are likely.

[27] Thirdly, for the reasons advanced by the QCU, we are persuaded that there is merit in increasing the casual loading rate from 23% to not less than 25% in respect of modern awards, certified agreements and arbitration determinations, which apply to casual employees, and that are in operation under the Act. This is because:

- material considerations of the federal tribunal and of this Commission, in determining the casual loading rate, are the value of paid leave entitlements not available to casual employees and advances in other employment conditions not available to casual employees;

- while the Full Bench is required to bring an independent mind to the task of whether the casual loading rate determined by the Fair Work Commission is to be adopted, this Commission may have regard to the casual loading rate set by the Fair Work Commission;[12]

- the casual loading rate, in respect of state system employees in Queensland, has not been reviewed by a Full Bench of the Commission, by way of an application for a General Ruling, since 2001;

- since 2001 there have been improvements to the employment conditions for non-casual state system employees, as identified by the QCU in its submissions, where there has been no relevant adjustment to the casual loading rate for casual employees, and while we agree with the QCU's submission that we should not attempt to establish a precise formula for determining the casual loading rate, such matters are material considerations; and

- it is self-evident that:

[12] See *Declaration of General Ruling (State Wage Case 2022)* [2022] QIRC 340, [55]-[59] (Davis J, President, O'Connor VP and McLennan IC).

- a majority of casual employees in Queensland are national system employees for whom the casual loading rate is 25%; and

- as a consequence, the casual loading rate, which provides for fair standards in relation to living standards prevailing in the community, is at the rate of 25%.

[28] Finally, the QCU's application is supported by the State and the LGAQ.

The date of effect of the General Ruling

[29] The QCU's application sought a date of effect of the General Ruling of 1 July 2024 or '… the date any relevant order is made by the Commission (whichever is later).'

[30] Section 460(2)(b) of the Act provides that the Industrial Registrar may amend an industrial instrument taken to be amended under s 460(1) of the Act, as the Industrial Registrar considers appropriate, on the Industrial Registrar's own initiative. This is the mechanism by which the parties propose the affected industrial instruments are to be amended. We are of the view that the relevant amendment of the industrial instruments affected by the General Ruling will be important in ensuring compliance with the General Ruling.

[31] As a consequence, a short but reasonable period of time should be allowed for the Industrial Registrar to amend the affected industrial instruments in accordance with s 460(2)(b) of the Act. Although no employer party made any submission about this matter, we are also of the view that such a period of time will allow the affected employers to make the relevant adjustments to their payroll systems. In our view, such a period of time is approximately five weeks.

[32] The date of effect of the General Ruling will be Monday, 23 September 2024.

Conclusion

[33] For the reasons we have given:

- the discretion of the Full Bench to make the General Ruling, as sought by the QCU in its application, is enlivened;

- a General Ruling, which provides that the loading prescribed by all operative industrial instruments for casual employees (awards, certified agreements and arbitration determinations) be no less than 25%, should be made pursuant to s 458(1)(a) of the Act; and

- the General Ruling is to have effect on and from 23 September 2024.

[34] A General Ruling giving effect to this decision will be issued concurrently with this decision.