

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

s.158(1) RAO Schedule - Application for alteration of eligibility rules

**Application/Notification by CPSU, the Community and Public Sector Union
(D2006/56)**

SENIOR DEPUTY PRESIDENT LACY

MELBOURNE, 1 JUNE 2007

DECISION

[1] On 18 April 2006 CPSU, the Community and Public Sector Union (CPSU) applied for consent to an alteration of its eligibility rules. The application was made under Schedule 1, Chapter 5, Division 5, s.158 of the *Workplace Relations Act 1996* (WR Act). Notice of the application was published in the *Commonwealth of Australia Gazette*, Government Notices, GN22 on 28 June 2006.

[2] By its application the CPSU proposed an alteration to Part 1 of Rule 2, Chapter A of its rules. The CPSU resolved that Rule O.2. should be amended in the following way:

Insert a new sub-rule 2(o)(2)(d) as follows:

(d) *Medibank Private (at the date of gazettal).*

[3] The only objection to the application was that of Australian Municipal, Administrative, Clerical and Services Union (ASU).

[4] The reason for and stated effect of the proposed alteration was as follows:

The CPSU currently has coverage of staff working for Medibank Private. A rule change is needed however due to the impending sale of Medibank Private to a private health insurance provider.

The current eligibility rules do not provide coverage for Medibank Private in the event of the agency being privatised, and the proposed rule change addresses the issue regardless of who the new employer may be.

[5] The matter was first listed for mention and programming on 27 September 2006. The parties sought and were granted time for discussions directed to settling the objections. Further listings occurred for mention and/or directions on 25 October and 27 November 2006 and 24 January, 5 March, 10 April and 3 May 2007. The listings on 27 November 2006 and 5 March and 10 April 2007 were cancelled at the request and by consent of the parties.

[6] When the matter came on for hearing on 31 May 2007 CPSU announced that it had reached agreement with the ASU on all aspects of its objection and tendered the written terms

of settlement in the form of a *Deed of Agreement* (Agreement)¹. Omitting formal parts the Agreement relevantly provides:

TERMS OF AGREEMENT:

1. *This agreement is intended to be legally binding as between the parties and to have full legal force and effect notwithstanding any changes in the Workplace Relations Act 1996 (“the Act”) or otherwise.*
2. *The parties agree that each will use its best endeavours to foster and maintain, a co-operative approach to industrial relations in the health insurance industry.*
3. *This agreement shall remain in force until varied or rescinded by any subsequent agreement of the parties.*
4. *Pursuant to s.158(5) of Schedule 1B of the Act, the CPSU undertakes that, as a condition of the consent of the Presidential Member to the CPSU’s proposed alterations to its eligibility rule [D2006/56] , the CPSU undertakes as follows:*

4.1 Sale of Medibank Private

(a) Public Float

In the event of Medibank Private being sold as a single entity in a Public Float the CPSU will continue to cover persons employed by Medibank Private but will not seek to extend their coverage beyond the privatised organisation.

(b) Trade Sale

In the event of Medibank Private being sold as separate components in a Trade Sale the CPSU will only seek to continue its coverage of existing members but not seek to cover persons performing the work once carried out by Medibank Private.

(c) Other Sale Process

In the event of Medibank Private being sold other than by (a) or (b) above such as but not limited to a combination of a Public Float and Trade Sale; the CPSU will meet with the ASU as soon as possible to reach agreement for joint coverage based on the undertakings in (a) and (b).

- 4.2** *The CPSU will not use this agreement, or coverage granted under D2006/56, to extend their coverage of persons employed in the Health Insurance industry nor as a precedent to support any other Schedule 1B application.*

¹ Exhibit CPSU-1.

[7] There follows a dispute resolution clause, which provides for a stepped process of private consultation followed by submission to the ACTU and, ultimately, the Australian Industrial Relations Commission or a private arbitrator for arbitration if necessary.

[8] I am satisfied that the rule alterations were made in accordance with the rules of the organisation. In so finding I rely on the declaration and supplementary declaration of Stephen Jones, Joint National Secretary of the CPSU, dated 11 April and 19 June 2006.

[9] There is no evidence before me to suggest that there is another organisation, apart from the ASU, to which the persons who would be eligible for membership of CPSU because of the rule alteration, could more conveniently belong or that would more effectively represent those members. I am satisfied that the undertakings that appear in the Agreement are relevant and appropriate to avoid demarcation disputes that might arise from any overlap in coverage.

[10] There are no grounds additional to those set out in s.158 of Schedule 1 of the WR Act that would persuade me to withhold my consent to the alteration. Accordingly I consent to the alteration to the CPSU eligibility rules by inserting subparagraph (d) in sub-rule 2 of Rule O. Rule O is amended to read as follows:

O. 1. Notwithstanding anything to the contrary in these rules persons will be eligible for membership of the union;

(a) if they are performing work that was previously performed by a body listed in part (2) below at the date specified for that body; and

(b) they would have been eligible for membership of the union had they been performing the work whilst employed in or by a body listed in part (2) below at the date specified for that body.

2. (a) Federal Airports Corporation as at 7 May 1998.

(b) Airservices Australia (at the date of gazettal).

(c) Centrelink (at the date of gazettal)

(d) Medibank Private (at the date of gazettal)

[11] The alteration takes effect on and from 1 June 2007.

BY THE COMMISSION:

SENIOR DEPUTY PRESIDENT

Appearances:

L Lind Duigu for Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia.

J Nucifora for Australian Municipal, Administrative, Clerical and Services Union.

Hearing details:

2007.

Melbourne.

May 31.

Printed by authority of the Commonwealth Government Printer

<Price code {A}>