

## **REQUEST UNDER SECTION 140C (1) – AWARD MODERNISATION**

**I, JARROD BLEIJIE, ATTORNEY-GENERAL AND MINISTER FOR JUSTICE**, pursuant to section 140C(1) of the *Industrial Relations Act 1999* (“the Act”) request that the Vice-President of the Queensland Industrial Relations Commission (“the Commission”) undertake award modernisation in accordance with this request.

This award modernisation request is to be read in conjunction with Chapter 5 Part 8 of the Act.

### **Objects**

1. The aim of the award modernisation process is to create a comprehensive set of modern awards. As set out in section 140BA of the Act, the principal object of the modernisation process is the modernisation of awards so they:
  - (a) are simple to understand and easy to apply; and
  - (b) together with the Queensland Employment Standards (QES), provide for a fair minimum safety net of enforceable conditions of employment for employees; and
  - (c) are economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and
  - (d) are in a form that is appropriate for a fair and productive industrial relations system; and
  - (e) result in a certain, stable and sustainable modern award system for Queensland.
2. The creation of modern awards is **not** intended to:
  - (a) extend award coverage to those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have traditionally been award free. This does not preclude the extension of modern award coverage to new industries or new occupations where the work performed by employees in those industries or occupations is of a similar nature to work that has historically been regulated by awards; or
  - (b) result in high-income senior employees, as defined by section 189 of the Act, being covered by modern awards.

### **Performance of functions by the Commission**

3. In accordance with section 140BB(2) of the Act, the Commission must have regard to the following factors when performing its functions under Chapter 5 Part 8 of the Act and this award modernisation request:
  - (a) promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;
  - (b) the need to help prevent and eliminate discrimination in employment;

- (c) protecting the position in the labour market of young people, employees engaged as apprentices or trainees and employees with a disability;
- (d) the needs of low-paid employees;
- (e) the need to promote the principle of equal remuneration for work of equal value;
- (f) the need to help employees balance their work and family responsibilities effectively and to improve retention and participation of employees in the workforce;
- (g) the safety, health and welfare of employees;
- (h) the Queensland minimum wage;
- (i) the desirability of reducing the number of awards operating under the Act;
- (j) the representation rights of organisations and associations under the Act.

#### **Award modernisation process**

4. In creating modern awards, and as indicated at paragraph 3(i) above, the Commission must have regard to the desirability of reducing the number of awards operating under the Act.
5. When modernising awards, the Commission is to create fewer modern awards which may be organised across industry and/or occupational lines as it considers appropriate, subject to the priority industries/occupations listed at paragraph 19 of this request.
6. Subject to this request, the Commission will identify the type of work, industry and/or occupations covered by a modern award and the application of each award.
7. The Commission is to have regard to the desirability of avoiding the overlap of awards and minimising the number of awards that may apply to a particular employee or employer.
8. In developing the content for modern awards, the Commission will have regard to the safety net community standards operating in respect of similar work throughout Australia, including properly fixed minimum rates and allowances.

#### **Award modernisation process consultation**

9. After receiving this award modernisation request, the Commission may, as it considers appropriate, consult with the major employer and employee representative bodies on the best process to be followed by the Commission when creating modern awards.
10. The Commission will then release a clear program and timetable for completing the award modernisation process.
11. In determining the program and timetable for completing the award modernisation process, the Commission must have regard to the prioritisation of particular industries and/or occupations listed at paragraph 19 of this request.

12. The Commission will prepare an exposure draft of each modern award. The Commission will, as appropriate, hold a conference or conferences with major employer and employee representative bodies for the purpose of informing the preparation of each exposure draft.
13. The Commission is to publish exposure drafts of each modern award for the purpose of further consultation and to ensure that all stakeholders and interested parties have a reasonable opportunity to comment upon the exposure drafts. In so far as is practicable, the exposure drafts will be electronically published for comment.
14. Consultation on exposure drafts of modern awards will be open and transparent.

### **Creating modern awards**

15. Upon completion of the consultation processes in relation to an exposure draft, the Commission will prepare the modern award.
16. The Vice-President may establish one or more Full Benches for the purpose of creating modern awards. Each modern award is to be created by a Full Bench.

### **Timing**

17. The Commission is to complete the award modernisation process by 31 December 2015.
18. To that end, the Commission shall:
  - (a) revise the timetable for completing the award modernisation process to provide:
    - i. by 31 August 2014, have created a modern award or awards for each of the industries or occupations identified at subclauses 19(a)\*,(c) and (d);
    - ii. by 30 September 2014, have created a modern award for the industries or occupations identified at subclause 19(b); and
    - iii. by 30 April 2015, have created a modern award or awards for the industries or occupations identified at subclause 19(da) to 19(m); and
    - iv. by 31 December 2015, have created a modern award or awards for the industries or occupations identified at subclauses 19(n) to (v).
  - (b) where an agreement has become a ‘continuing agreement’, ensure that the relevant award or awards are modernised no later than the nominal expiry date of the ‘continuing agreement’.

### **List of priority industries/occupations**

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\* Varied under s.140CA of the *Industrial Relations Act 1999* by letter from the Attorney-General and Minister for Justice issued 15 October 2014, which states: “I vary the Request, insofar as the modern award for Health Professionals (including dentists and health practitioners) as described at Schedule 1(a) of the Request, is to be made on or before the 17 October 2014”. See also note at Schedule 1(a).

19. In developing a timetable for completing the award modernisation process, the Commission is required to prioritise the creation of modern awards covering the following industries or occupations:

- (a) Health (as defined in Schedule 1);
- (b) Local government (excluding Brisbane City Council);
- (c) Public service (see paragraph 22 below);
- (d) Rail;
- (da) Public service – Operational (see paragraph 22A below);
- (e) Building, Engineering and Maintenance;
- (f) City Parklands Transitions Services;
- (g) Cultural Centres (to cover Gallery of Modern Art, Queensland Art Gallery, Queensland Museum and State Library of Queensland);
- (h) Health (as defined in Schedule 2);
- (i) Local Government (Brisbane City Council);
- (j) Stadiums Queensland;
- (k) Parents and Citizens;
- (l) TAFE;
- (m) Water distributions entities;
- (n) Police;
- (o) Fire & emergency;
- (p) Teachers;
- (q) Corrections;
- (r) Nurses & midwives;
- (s) Ambulance;
- (t) Youth workers;
- (u) Disability services; and
- (v) All remaining industries or occupations not elsewhere provided for.

### **Local Government**

20. When undertaking the award modernisation process with regard to the Local Government sector (excluding Brisbane City Council), the Commission is to give consideration to consolidating the *Queensland Local Government Officers Award 1998*; the *Municipal Officer's Award (Aboriginal and Islander Community Councils) Award 2004*; and the *Local Government Employees (Excluding Brisbane City Council) Award State 2003* (collectively, the Awards) and creating a new modern Local Government Industry Award covering employers and employees subject to those Awards.

21. When undertaking the award modernisation process with regard to the Local Government sector (excluding Brisbane City Council), the Commission is also to endeavour, where practicable, to review any other awards which underpin Local Government Agreements which nominally expire throughout the first half of 2014, in order that negotiations for the replacement of those agreements can be commenced in a timely manner.

### **Public Service**

22. With reference to paragraph 19(c) above, the QIRC should give consideration to:

- (a) making a single consolidated award for employees engaged in the Queensland public service in administrative, professional, technical and related ‘white collar’ occupations under the follow awards:

Queensland Public Service Award – State 2012  
Crime and Misconduct Commission Employees Award – State 2012  
Queensland Building Services Authority Award – State 2012  
QRAA Award – State 2012  
Residential Tenancies Authority Employees’ Award – State 2012  
Safe Food Production Queensland - Employees’ Award 2012

- (b) making a modern “stand alone” award for each of the following awards:

Legal Aid Queensland Employees Award – State 2012  
Parliamentary Service Award – State 2012  
Tourism Queensland Employees’ Award – State 2012  
Workers’ Compensation Queensland Award – State 2012

### **Public Service – Operational**

22. A. With reference to paragraph 19(da) above, the Commission is to give consideration to making a single consolidated award for employees engaged in the Queensland public service in operational and related ‘blue-collar’ occupations under the Employees of Queensland Government Departments (Other than Public Servants) Award – State 2012 and other relevant awards as identified by the Commission.

### **Generic Awards**

23. When modernising awards, the Commission is to give consideration to:
- a) the following generic awards:
    - i. Family Leave Award – State 2012;
    - ii. Family Leave (Queensland Public Sector) Award – State 2012;
    - iii. Training Wage Award – State 2012;
    - iv. Supported Wage Award – State 2012; and
  - b) identifying any matters contained in these awards which the Commission considers are safety net terms and conditions and, if the Commission is satisfied that the matters are not adequately provided for in the QES and are permitted to be included in modern awards, the Commission should:
    - i. develop a consistent approach to include such matters in modern awards, or
    - ii. make a specific modern award or awards.

### **Community Police in the Torres Strait**

24. When developing a timetable for completing the modernisation process, the Commission is to give consideration to prioritising the modernisation of awards covering Community Police in the Torres Strait which were affected by the transitional provisions of the Act.

## **Reporting on the progress of award modernisation**

25. Once the Commission has identified a list of awards for modernisation which are connected with priority industries/occupations and developed a timetable for completing the award modernisation process, the Vice-President is to provide the Attorney-General with an initial report outlining the details of the timetable and any other matters which the Vice-President considers appropriate.
26. Following this initial report, the Vice-President is to provide the Attorney-General with regular reports outlining:
  - (a) those industries and/or occupations undergoing or about to commence award modernisation;
  - (b) the progress of award modernisation, including any significant developments during the previous period and key issues or developments scheduled for the next period;
  - (c) any other matters which the Vice-President considers appropriate; and
  - (d) a response to any matters raised by the Attorney-General.
27. The reports are due by:
  - (a) 31 March 2014;
  - (b) 31 August 2014;
  - (c) 31 December 2014;
  - (d) 31 May 2015;
  - (e) 31 December 2015.

## **Content**

28. When modernising awards, the Commission is to have particular regard to Chapter 2A, Part 3 of the Act which deals with the content of modern industrial instruments, and more specifically the content of modern awards, including the provisions that are required to be included, are permitted to be included and must not be included in modern awards.
29. Each modern award must include:
  - (a) A consultation term that satisfies the requirements of section 71M of the Act;
  - (b) A dispute resolution term that satisfies the requirements of section 71MA of the Act;
  - (c) A flexibility term that satisfies the requirements of section 71MB of the Act; and
  - (d) Coverage provisions that satisfy the requirements of section 71MC of the Act.
30. When modernising awards, where there is any overlap or potential overlap in the coverage of modern awards, the Commission will as far as possible include clear

rules in the modern awards that identify which award applies. As far as practicable, only one set of terms and conditions and one modern award should apply to any one employee at any point in time.

31. Consistent with section 71NB of the Act, a modern award may include provisions, other than non-allowable provisions, that are incidental to a provision that is required or permitted to be included in the instrument and are essential for making a particular provision operate in a practical way.
32. In creating a modern award, consistent with section 71NC of the Act, the Commission is to assess whether machinery provisions are necessary for the applicable industry or occupation, and where they should be included.
33. The Commission may include transitional arrangements in modern awards to ensure the Commission complies with the objects and principles of award modernisation set out in this award modernisation request.
34. Subject to this request and section 71NA of the Act, modern awards may also include provisions relating to the QES.

### **Interaction with the Queensland Employment Standards**

35. The QES consist of comprehensive legislated core employment standards for all employees covered by the state industrial relations system. The QES establish a simple legislative framework of minimum entitlements with straightforward application or machinery rules that are essential to the operation of each entitlement. The QES will operate in conjunction with a relevant modern award to provide a fair safety net of minimum entitlements for award covered employees.
36. A modern award cannot exclude the QES or any provision of the QES.
37. A modern award may include any provision, other than a non-allowable provision, that provides for all or part of a matter that is provided for under the QES but only to the extent that the effect of the provision is no less favourable to an employee than the QES. A modern award may replicate a provision of the QES only where the Commission considers this essential for the effective operation of the particular modern award provision. Where a modern award replicates a provision of the QES, QES entitlements will be enforceable only as QES entitlements and not as provisions of the modern award.
38. A modern award may include any provision, other than a non-allowable provision, that is ancillary or incidental to the operation of the entitlement of an employee under the QES, but only to the extent that the effect of the provision is no less favourable to an employee than the QES.
39. A modern award may include any provision, other than a non-allowable provision, that supplements the QES where the Commission considers it necessary to do so to achieve the modern award objectives, having regard to the terms of this request and the existing award provisions for those employees. The Commission may only

supplement the QES where the effect of the provision is no less favourable to an employee than the QES.

40. A modern award may include industry-specific detail about matters in the QES.

### **Minimum wage**

41. In accordance with section 71ND of the Act, minimum wages are a matter that may be dealt with in modern awards. In dealing with minimum wages, the Commission is to have regard to the desire for modern awards to provide a comprehensive range of fair minimum wages for all employees including, where appropriate, piece rates and wages for young employees, employees with a disability and employees engaged as apprentices or trainees.

### **Allowances**

42. Allowances should be clearly and separately identified in modern awards.

43. The Commission is to ensure that all modern awards include an appropriate method or formula for automatically adjusting relevant allowances when minimum wage rates are adjusted.

### **Ordinary hours of work**

44. The Commission is to ensure that it specifies in each modern award the ordinary hours of work for each classification of employee covered by the modern award. The Commission is also to ensure that ordinary hours, or the process for determining ordinary hours, are specified for each type of employment permitted by the modern award (for example, part time, casual).

### **Consolidation and consistency**

45. Throughout the award modernisation process, the Commission must seek to consolidate modern awards to:

- a) reduce the number of awards;
- b) avoid unnecessary overlap and duplication of coverage of awards;
- c) ensure consistency of content; and

ensure that the objectives in this paragraph are met for all modern awards prior to the completion of the process for the purposes of section 140CD of the Act. If necessary, the Commission may act in this regard of its own motion under section 140G(3)(a) of the Act.

46. To achieve the objectives outlined in paragraph 45 above, the consolidation process may result in a reduction in the number of modern awards initially made by the Commission. The consolidation process should not result in significant variation to any substantive terms and conditions of employment contained in modern awards made prior to the consolidation process. If this is to occur, the



Commission is required to prioritise the consolidation of the modern awards covering the industries or occupations set out at paragraph 19 of this request.

### **Schedule 1 - Clause 19 (a) List of priority industries / occupations – Health**

For the purposes of prioritisation, Health includes:

- (a) Health Professionals (including dentists and health practitioners)\*; and
- (b) Medical Officers

### **Schedule 2 – Clause 19(h) List of priority industries /occupations – Health**

- a) Hospital and Health Services (including health support services, professionals, technical, operational and administrative officers)

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