

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - ss. 140G and 140GC - Variation of modern award
ss. 140G(3)(a) and 140GC(2)(a) - Commission acting on its own initiative

**AWARD FOR OPERATIONAL EMPLOYEES IN
DISABILITY AND FORENSIC SERVICES - STATE 2016**

Matter No. MA/2016/28

DEPUTY PRESIDENT O'CONNOR
DEPUTY PRESIDENT SWAN
INDUSTRIAL COMMISSIONER THOMPSON

5 December 2016

DETERMINATION

This matter coming on for hearing before the Commission at Brisbane on 5 December 2016 this Commission orders that the said Award be varied as follows as from 5 December 2016:

1. By deleting clause 1 and inserting the following in lieu thereof:

1. Title

This Award is known as the *Award for Operational Employees in Disability and Forensic Services – State 2016*.

2. By deleting the definition of "union" and inserting the following in lieu thereof:

union means one of the industrial organisations of employees mentioned in clause 4.1(c)

3. By deleting clause 5 and inserting the following in lieu thereof, as well as updating the heading of clause 5 in the Table of Contents:

5. The Queensland Employment Standards and this Award

This Award together with the QES provide for a minimum safety net of enforceable conditions of employment for employees covered by this Award.

4. By deleting clauses 6.2(f) and inserting the following in lieu thereof:

(f) Where a provision refers to agreement by the majority of employees affected, all employees directly affected shall be consulted. This consultation shall be undertaken where practicable as a group, or in groups. Should the consultation process identify employees with specific concerns which relate to either equity or occupational health and safety issues, such concerns may be catered for on an individual basis subject to operational requirements.

5. By deleting the heading of clause 7.1 and inserting the following in lieu thereof:

7.1 Prevention and settlement of disputes - Award matters

6. By deleting clause 7.1(d)(ii) and inserting the following in lieu thereof:

Determination

- (ii) if the matter is not resolved as per clause 7.1(d)(i), it shall be referred by the union representative and/or the employee/s to the appropriate management representative who shall arrange a conference of the relevant parties to discuss the matter. This process should not extend beyond 7 days;

7. By deleting clause 7.1(e) and inserting the following in lieu thereof:

- (e) Nothing contained in this procedure shall prevent a union or the employer from intervening in respect of matters in dispute should such action be considered conducive to achieving resolution

8. By deleting the heading of clause 7.2 and inserting the following in lieu thereof:

7.2 Employee grievance procedures - other than Award matters

9. By deleting clauses 7.2(a) and (b) and inserting the following in lieu thereof:

- (a) The objectives of the procedure are to promote the prompt resolution of grievances by consultation, co-operation and discussion to reduce the level of disputation and to promote efficiency, effectiveness and equity in the workplace.

- (b) The following procedure applies to all industrial matters within the meaning of the Act:

Stage 1: In the first instance the employee shall inform such employee's immediate supervisor of the existence of the grievance and they shall attempt to solve the grievance. It is recognised that an employee may exercise the right to consult such employee's union representative during the course of Stage 1

Stage 2: If the grievance remains unresolved, the employee shall refer the grievance to the next in line management ("the manager"). The manager will consult with the relevant parties. The employee may exercise the right to consult or be represented by such employee's union representative during the course of Stage 2

Stage 3: If the grievance is still unresolved, the manager will advise the employer and the aggrieved employee may submit the matter in writing to the employer if such employee wishes to pursue the matter further. If desired by either party the matter shall also be notified to the relevant union.

10. By deleting clause 8.1 and inserting the following in lieu thereof:

8.1 Full-time employment

A full-time employee is one who is engaged to work an average of 38 ordinary hours per week as prescribed in clause 15 of this Award.

11. By deleting clause 8.3(a)(ii) and inserting the following in lieu thereof:

- (ii) A casual employee cannot be employed to work more ordinary hours than are worked by an equivalent full-time employee each week or fortnight, as the case may be.

12. By deleting clause 9.3 and inserting the following in lieu thereof:

9.3 Notice cannot be offset

In the absence of mutual agreement between the employer and the employee, annual leave or any part thereof cannot be considered as or nominated as notice for the purpose of giving notice of termination of employment.

Determination

13. By deleting clause 9.5 and inserting the following in lieu thereof:

9.5 Statement of employment

The employer shall, in the event of termination of employment, provide upon request to an employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

14. By deleting clause 10.2(b) and inserting the following in lieu thereof:

- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision which will invoke the provisions of clause 10.2(a) and shall cover the reasons for the proposed terminations and measures to avoid or minimise the terminations and/or their adverse effects on the employee/s concerned.

15. By deleting clause 10.9 and inserting the following in lieu thereof:

10.9 Employees exempted

Clauses 10.1 to 10.8 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
(b) to an employee engaged for a specific period or task/s; or
(c) to a casual employee; or
(d) to an employee with less than one year's continuous service, in which case the general obligation on the employer should be no more than to give the relevant employee an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by the employee of suitable alternative employment

16. By deleting clause 11.2(a) and inserting the following in lieu thereof:

- (a) The employer shall consult the employees affected and, where relevant, their union/s about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals) and ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).

17. By deleting the heading of Part 4 in both the Table of Contents and the Award itself and inserting in lieu thereof:

PART 4 - Minimum Salary Levels, Allowances and Related Matters

18. By deleting the Note immediately below the heading for Part 4 and inserting the following in lieu thereof:

(Note: The wage rates and salary levels prescribed in this Award do not apply to employees to whom the provisions of Schedule 1 (Supported Wage System) apply.)

19. By deleting clause 13.4 and inserting the following in lieu thereof:

13.4 Motor vehicle allowance

- (a) Where the employer requires an employee to use their own vehicle in or in connection with the performance of their duties, the employee shall be paid an allowance for each kilometre of authorised travel as follows:

Determination

- (i) motor vehicle - \$0.77 per kilometre; and
 - (ii) motorcycle - \$0.26 per kilometre.
- (b) The employer may require an employee to record full details of all such official travel requirements in a log book.

Note: Where a directive about motor vehicle allowances covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

20. By deleting clause 13.5(c) as well as the Note which is below clause 13.5(c), and inserting the following in lieu thereof:

- (c) An employee working overtime in the circumstance mentioned in clause 13.5(a) shall be entitled to take a meal break/s according to clause 16.

Note: Where a directive about overtime meal allowances covers an employee, the directive applies to the extent it provides a more generous entitlement.

21. By deleting clause 13.6 and inserting the following in lieu thereof:

13.6 Adjustment of monetary allowances

- (a) At the time of any adjustment to the wage rates in this Award the expense related allowances at clauses 13.1 (clothing maintenance allowance), 13.4 (motor vehicle allowance) and 13.5 (overtime meal allowances), respectively, shall be automatically adjusted by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index, as follows:

<u>Allowance</u>	<u>Eight Capitals Consumer Price Index</u> <u>(ABS Cat No. 6401.0 - Table 7)</u>
Clothing maintenance allowance <i>(last adjusted 1 September 2014)</i>	Clothing and footwear group
Motor vehicle allowance <i>(last adjusted 1 September 2014)</i>	Private motoring sub-group
Overtime meal allowance <i>(last adjusted 1 September 2016)</i>	Take-away and fast foods sub-group

22. By deleting clause 14(b) and inserting the following in lieu thereof:

- (b) Where Commonwealth legislation provides for choice of fund rights to an employee subject to this Award, and that employee fails to elect which superannuation fund to which employer contributions are directed, the employer will direct contributions to the appropriate fund prescribed in the abovementioned Queensland legislation.

23. By deleting clause 18.1(b) and inserting the following in lieu thereof:

Determination

- (b) Notwithstanding any other provision in clause 18, except clause 18.1(d), an employee who performs work outside the prescribed hours of duty may, by mutual agreement with the supervisor, be compensated by way of TOIL accrued on a time for time basis.

24. By deleting clause 18.2(b) and inserting the following in lieu thereof:

- (b) A day worker required to work on their first or third scheduled day off or when recalled to perform duty after completing their normal shift on any day shall be paid at the rate of time and one-half for the first 3 hours and double time thereafter, with a minimum payment as for 3 hours' work.

25. By deleting clause 18.4(a) and inserting the following in lieu thereof:

- (a) Where an employee is instructed to be available on call outside ordinary or rostered working hours, the employee shall be paid, in addition to their ordinary rate of pay, an allowance based upon the hourly rate of the classification of **professional officer level 3, paypoint 4** under the *Queensland Public Service Officers and Other Employees Award – State 2015*, in accordance with the following scale:
 - (i) where the employee is on call throughout the whole of a scheduled day off or a public holiday: 95% of the prescribed hourly rate;
 - (ii) where an employee is on call during the night only of a scheduled day off, a rostered day off or a public holiday: 60% of the prescribed hourly rate;
 - (iii) where an employee is on call on any other night: 47.5% of the prescribed hourly rate.

26. By deleting clause 18.5(d)(ii) and inserting the following in lieu thereof:

- (ii) Where undertaking normal duties (e.g. correcting/resolving faults via internet, making and receiving phone calls in order to manage an incident other than provided for in clause 18.5(d)(i)), payment at the overtime rate prescribed in clauses 18.2 or 18.3 for the actual time worked with a minimum payment of one hour for each time the employee performs such duties. Should the employee be recalled again to perform duties separately within the minimum one hour period, no further payment shall apply.

27. By inserting a new clause 19.1, and renumbering the current clause 19.1 to become 19.2, as follows:

19.1 Additional period of annual leave

In lieu of the requirements prescribed at Sections 71EA(1)(b) and (6) of the Act, a continuous shift worker covered by this Award shall be entitled to one additional week of annual leave.

28. By deleting clauses 19.2(b) and (c) and inserting the following in lieu thereof:

- (b) A non-continuous shift worker proceeding on annual leave is entitled to receive the following payment:
 - (i) an amount equal to the salary level being paid to the employee immediately before the employee takes the leave for the period of such leave calculated according to the employee's roster or projected roster including shift, weekend or public holiday penalties; or
 - (ii) an amount equal to the salary level being paid to the employee immediately before the employee takes the leave for the period of such leave plus a further amount equal to 17.5% of the salary payable for ordinary time in relation to the employee's substantive position for the period of such leave, excluding any shift, weekend or public holiday penalties,

whichever is the higher.

Determination

- (c) A continuous shift worker proceeding on annual leave is entitled to receive the following payment:
- (i) an amount equal to the salary level being paid to the employee immediately before the employee takes the leave for the period of such leave, calculated according to the employee's roster or projected roster including shift, weekend or public holiday penalties; or
 - (ii) an amount equal to the salary level being paid to the employee immediately before the employee takes the leave for the period of such leave plus a further amount equal to 27.5% of the salary payable for ordinary time in relation to the employee's substantive position for the period of such leave, excluding any shift, weekend or public holiday penalties,

whichever is the higher.

29. By deleting clause 21 and inserting the following in lieu thereof:

21. Parental leave

- (a) Parental leave is provided for in Division 5 of the QES and covers:
- (i) birth-related leave for an employee who is pregnant or whose spouse gives birth;
 - (ii) adoption leave; and
 - (iii) surrogacy leave.
- (b) Notwithstanding the provisions of Subdivision 2 of Division 5 of the QES, all full-time and part-time employees are entitled to parental leave upon commencement of employment.
- (c) (i) An employee who is pregnant, whether or not she has given her employer written notice of the date/s on which she proposes to start and/or end maternity leave, must:
- (A) commence maternity leave at least 6 weeks prior to the expected date of birth of her child; and
 - (B) remain on maternity leave until at least 6 weeks after the birth of the child.
- (ii) An employer may at the request of the employee and on receipt of a certificate from a medical practitioner certifying that in the opinion of the medical practitioner:
- (A) the employee is fit for duty until a specified date - reduce the period mentioned in clause 21(c)(i)(A); or
 - (B) the employee is fit to resume duty - reduce the period mentioned in clause 21(c)(i)(B).
- (iii) If the employer makes a decision under clause 21(c)(ii)(A) to reduce the period, the approval is of effect until:
- (A) the day specified in the medical certificate; or
 - (B) the day 14 days after the day the employer revokes the decision by giving written notice to the employee; or
 - (C) the employee commences maternity leave; or

Determination

(D) the day of the employee's confinement,

whichever happens first.

- (d) An employee who is pregnant, during the term of her pregnancy until 6 weeks before the expected date of birth of her child or lesser period as approved by the employer, may request to work part-time or other flexible work arrangements.
- (e) An employee who has taken leave to attend compulsory interviews or examinations as part of an adoption process or who has taken leave to attend compulsory interviews or court hearings associated with a surrogacy arrangement may request that such leave be taken as paid annual leave.
- (f) In addition to the provisions of Subdivision 6 of Division 5 of the QES an employee who has returned to work on a part-time basis may seek to return to the position they held prior to commencing parental leave.
- (g) If the position mentioned in clause 21(f) no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position that is, as nearly as possible, comparable in status and remuneration to that of the employee's former position.
- (h) The employer must make a position to which the employee is entitled available to the employee.
- (i)
 - (i) An employee who is the parent of a child may apply, at any time, to their employer to work on a part-time basis in order to be the child's primary caregiver when not at work.
 - (ii) The requirements concerning the manner in which the employee may make an application to work part-time under clause 21(i)(i) are the same as those contained in the QES with respect to applications to return to work on a part-time basis for an employee on parental leave (i.e. s 71 GT).
 - (iii) The period in relation to which an application under clause 21(i) may be made cannot extend beyond the day the child is required to be enrolled for compulsory schooling under the *Education (General Provisions) Act 2006*.
 - (iv) The requirements concerning the manner by which the employer is to assess any application by an employee to work part-time are the same as those contained in the QES with respect to assessing applications to return to work on a part-time basis for an employee on parental leave (i.e. s 71GU).

Note: Where a directive about paid parental leave covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

30. By deleting clause 22(b) and inserting the following in lieu thereof:

- (b) In lieu of the provisions of section 71HB(2)(a) and (b) of the Act, all employees who complete 10 years' continuous service are entitled to long service leave at the rate of 1.3 weeks on full pay for each year of continuous service and a proportionate amount for an incomplete year of service.

31. By deleting clauses 23.1 to 23.3 and inserting the following in lieu thereof:

23.1 Payment for public holidays

- (a) An employee (other than a casual employee) who would normally work on a day on which a public holiday falls and who:

Determination

- (i) is not required to work on that day, shall be paid for the ordinary hours the employee would normally have worked if that day had not been a public holiday;
 - (ii) is required to work on the public holiday shall, in addition to the payment prescribed in clause 23.1(a)(i), be paid at the rate of time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.
- (b) An employee (including a casual) who would normally work on a day on which a public holiday falls and who performs authorised overtime outside the employee's ordinary working hours for that day shall be paid for such time at double the overtime rate prescribed in clauses 18.2 or 18.3, as the case may be.
 - (c) An employee who would not normally be required to work on a public holiday but who is required to work on that day shall be paid at the rate of double time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.
 - (d) The minimum payment provided in clauses 23.1(a)(ii) or (c) shall not apply where the work performed on the public holiday is immediately preceding or following ordinary hours.

23.2 Substitution

- (a) Subject to statutory limitations (such as the time that work may not be performed on Anzac Day), where there is agreement between the employer and an employee or employees another ordinary working day may be substituted for a public holiday.
- (b) Where an employee is subsequently required to work on the substituted day they shall be paid at the rate prescribed in clause 23.1.

23.3 Christmas Day

- (a) If Christmas Day (i.e. 25 December) falls on a Saturday or a Sunday and the public holiday is observed on another day, an employee working shift work or an employee who does not ordinarily work on Monday to Friday of each week who is required to work on Christmas Day (i.e. 25 December) is to be paid at the usual rate for work performed on a Saturday or a Sunday, as the case may be, plus a loading of 50% of the ordinary hourly rate.
- (b) An employee who receives the loading under clause 23.3(a) and who is required to work on the public holiday gazetted in lieu of Christmas Day shall also be entitled to the appropriate public holiday penalty rates for that day

32. By deleting clause 27(c) and inserting the following in lieu thereof:

- (c) A consultative mechanism and procedures involving representatives of the employer, employees and relevant unions shall be established as determined by the employer, having regard to the size, structure and needs of the employer.

33. By deleting clause 30(d) and inserting the following in lieu thereof:

- (d) Upon request and subject to approval by the employer, employees may be granted paid time off in special circumstances to attend management committee meetings, union conferences, and Australian Council of Trade Unions (ACTU) Congress.

34. By deleting Schedule 1 - Supported Wage System inserting the following in lieu thereof:

Determination

Schedule 1 - Supported Wage System

This Schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the supported wage system.

Definitions - In this Schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this Award for the class of work for which an employee is engaged

supported wage system (sws) means the Commonwealth Government system to promote employment for people who cannot work at full Award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

sws wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

Eligibility criteria

- (a) Employees covered by this Schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Award, because of the effects of a disability on their productive capacity, and who meet the impairment criteria for receipt of a disability support pension.
- (b) This Schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of the *Workers' Compensation and Rehabilitation Act 2003*.

Supported wage rates

- (a) Employees to whom this Schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following Table and Note:

Assessed capacity (see below)	Relevant minimum wage*
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

*Note: The minimum amount payable to an employee receiving a supported wage must not be less than \$82 per week.

Determination

- (b) Where an employee's assessed capacity is 10%, the employee must receive a high degree of assistance and support.

Assessment of capacity

- (a) For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the sws by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.
- (b) All assessments made under this Schedule must be documented in a sws wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the sws.

Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this Schedule will be entitled to the same terms and conditions of employment as other workers covered by this Award on a *pro rata* basis.

Workplace adjustment

If the employer wishes to employ a person under the provisions of this Schedule it must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation.

Trial period

- (a) In order for an adequate assessment of the employee's capacity to be made, the employer may employ a person under the provisions of this Schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- (c) The minimum amount payable to the employee during the trial period must be no less than the amount recorded in the Note under the Table (above).
- (d) Work trials should include induction or training as appropriate to the job being trialled.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment (see **Assessment of capacity** - above).

- 35. By deleting Schedule 2 "Directives Which Apply to Employees Covered by this Award" and inserting the following in lieu thereof:

Determination

Schedule 2 - Directives Which Apply to Employees Covered by this Award

Directives referenced in the body of the Award and which apply by operation of the Directive itself

- Domestic travelling and relieving expenses
- Early retirement, redundancy and retrenchment
- Higher duties
- Hours, overtime and excess travel
- International travelling, relieving and living expenses
- Locality allowances
- Long service leave
- Motor vehicle allowances
- Paid parental leave
- Sick leave
- Special leave (insofar as it relates to bereavement leave)
- Transfer and appointment expenses

Dated: 5 December 2016

By the Commission,
M. Shelley,
Deputy Industrial Registrar.

Operative Date: 5 December 2016
Determination - Correction of error

Released: 5 December 2016