

TORRES STRAIT ISLAND

REGIONAL COUNCIL

CERTIFIED AGREEMENT

CA1/2015

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 156 – certification of an agreement

Torres Strait Island Regional Council Certified Agreement

Matter No. 2015/CA000001

Industrial Commissioner Knight

05 February 2015

CERTIFICATE

This matter coming on for hearing before the Commission on 19 January 2015 the Commission certifies the following written agreement:

Torres Strait Island Regional Council Certified Agreement – 2015/CA000001.

Made between:

Torres Strait Island Regional Council and Employees of Torres Strait Island Regional Council

The agreement was certified by the Commission on 19 January 2015 and shall operate from 19 January 2015 until its nominal expiry on 30 June 2017.

In order to make the agreement certifiable, the following undertakings were given:

- With respect to the present wording of clause 3.3.4 of the Torres Strait Island Regional Council Certified Agreement 2015, which relevantly provides:

"3.3.4 Employees shall be required to produce a medical certificate completed by a medical practitioner as proof of lack of fitness to work when the absence from work is more than two (2) days. Failure by an employee to produce a medical certificate in contravention of this provision shall be considered misconduct by the employee."

Council provides undertaking that a failure to produce a medical certificate will not be considered misconduct unless procedural fairness has been granted to the employee, and only if the outcome of that process justifies such a finding.

By the Commission.

Industrial Commissioner Knight

Title

This Agreement shall be known as the Torres Strait Island Regional Council Certified Agreement 2015.

Part 1 – Application and Operation

1.1 Application

- 1.1.1 This Agreement shall apply to the Torres Strait Island Regional Council (“Council”) and its Employees (“employees”).
- 1.1.2 This Agreement shall not apply to the Chief Executive Officer or a Senior Executive unless a written contract of employment states otherwise.
- 1.1.3 “Senior Executive” means an employee who reports directly to the Chief Executive Officer and is responsible for one of the following departments:
- (a) Corporate Services; or
 - (b) Community Services; or
 - (c) Finance; or
 - (d) Engineering Services; or
 - (e) Any other department created by organisational restructure.
- 1.1.4 No employee currently employed at the time of certification shall suffer a reduction of benefits or wages/salary upon certification of this agreement.

1.2 Date and Period of Operation

This Agreement shall commence upon being certified by the Queensland Industrial Relations Commission (“the Commission”). This Agreement shall have an expiry date of 30 June 2017.

1.3 Relationship to Award

- 1.3.1 This Agreement is deemed to incorporate the following specific terms of the *Queensland Local Government Industry Award 2014* (“the Award”):
- (a) Clause 9.1 – Full-time employment;
 - (b) Clause 9.2 – Part-time employment;
 - (c) Clause 9.3 – Casual employment;
 - (d) Clause 9.5 – Probationary employment;
 - (e) Clause 9.6 – Incidental and peripheral tasks;
 - (f) Clause 10 – Termination;
 - (g) Clause 11 – Redundancy;
 - (h) Clauses 12.1, 12.2., 12.3, 12.4 and 12.5 – Classifications and minimum wage salary levels;
 - (i) Clause 12.9 – Junior Rates - General Stream;
 - (j) Clause 13 – Allowances;
 - (k) Clause 14 – Superannuation;
 - (l) Clauses 15, 16, 17, 18 – Hours of Work, Breaks, On Call, Overtime, Shift Work, Weekend Work;
 - (m) Clause 19 – Annual Leave;
 - (n) Clause 22 - Long Service Leave;
 - (o) Clause 23 – Public Holidays;
 - (p) Clause 24 – Jury Service;
 - (q) Clause 27 – Service Leave;
 - (r) Schedule 1 – Classifications and Wage Levels for Employees in the General Stream;
 - (s) Schedule 2 – Classifications and Wage Levels for Employees in the Children’s Services and Early Childhood Education Stream; and
 - (t) Schedule 3 - General Stream- Definitions and Position Descriptors.

(u) Schedule 4 – Children’s Services and Early Childhood Education Stream – Definitions and Position Descriptors.

1.3.2 To the extent and duration required by law, this Agreement is deemed to incorporate the following specific terms of the *Queensland Local Government Officers’ Award 1998* (“the QLGOA”):

- (a) Clause 12.1 – Locality Allowance
- (b) Clause 23.1.2 – Annual Leave

1.3.3 To the extent and duration required by law, this Agreement is deemed to incorporate the following specific terms of the *Municipal Officers’ (Aboriginal and Islander Community Councils) Award 2004* (“the MOAICCA”):

- (a) Clause 13.1 – Locality Allowance
- (b) Clause 20.1.2 – Annual Leave

1.3.4 Where there is any inconsistency between the express terms of this Agreement and the terms of the Award, the QLGOA and/or the MOAICCA, the terms of this Agreement shall prevail to the extent of any inconsistency. In this Agreement, references to the Award shall mean the specified Award terms as incorporated into this Agreement, unless the context requires otherwise.

1.3.5 The Queensland Employment Standards (“QES”) are minimum employment standards set out in chapter 2A of the *Industrial Relations Act 1999* (Qld) (“the Act”) and shall continue to apply to this Agreement to the extent required by law, namely: -

- (a) minimum wage;
- (b) annual leave;
- (c) personal leave (including sick, carer’s, bereavement and cultural leave);
- (d) parental leave;
- (e) long service leave;
- (f) public holidays; and
- (g) jury service.

Part 2 – Required Content, Fixed Term Employment and Higher Duties

2.1 Consultation

2.1.1 This term applies if—

- (a) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
- (b) the change is likely to have a significant effect on some or all employees (relevant employees) of the enterprise.

2.1.2 The employer must notify the relevant employees of the decision to introduce the major change.

2.1.3 The employer is not required to—

- (a) notify the relevant employees or a representative of the decision until the time the employer considers appropriate; or
- (b) consult with the relevant employees or a representative about the decision until the employer notifies the relevant employees or the representative of the decision; or
- (c) consult with the relevant employees or a representative about the decision other than in relation to implementation of the decision; or
- (d) disclose confidential or commercially sensitive information to the relevant employees or a representative.

- 2.1.4 The relevant employees may appoint a representative for the purposes of the procedures in this term if the representative is a union entitled to represent the employees' industrial interests.
- 2.1.5 If—
- (a) the relevant employees appoint a representative under clause 2.1.4 for the purposes of consultation; and
 - (b) the relevant employees advise the employer of the identity of the representative; the employer must recognise the representative.
- 2.1.6 As soon as practicable after notifying the relevant employees of the decision under clause 2.1.2, the employer must—
- (a) discuss with the relevant employees:
 - (i) the implementation of the change; and
 - (ii) the effect the implementation of the change is likely to have on the relevant employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the implementation of the change on the relevant employees; and
 - (b) for the purposes of the discussion—provide, in writing, to the relevant employees—
 - (i) information about the implementation of the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the implementation of the change on the relevant employees; and
 - (iii) any other matters regarding the implementation of the change likely to affect the relevant employees.
- 2.1.7 The employer must give prompt and genuine consideration to matters raised about the implementation of the major change by the relevant employees.
- 2.1.8 In this term, a major change is likely to have a significant effect on employees if it is likely to result in—
- (a) the termination of the employment of employees; or
 - (b) a major change to the composition, operation or size of the employer's workforce or the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) an alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to relocate employees to another workplace; or
 - (g) the restructuring of jobs.

2.2 Dispute Resolution

- 2.2.1 This term applies to a dispute regarding—
- (a) a matter arising under this industrial instrument; or
 - (b) the Queensland Employment Standards.
- 2.2.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term if the representative is a union entitled to represent the employee's industrial interests.
- 2.2.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee and relevant supervisors or management, or both.
- 2.2.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Commission.
- 2.2.5 The Commission may deal with the dispute as follows—

- (a) the Commission may first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation;
- (b) if the Commission does not resolve the dispute under paragraph (a), the Commission may then deal with the dispute in accordance with its jurisdiction under the Act.

Note—

1- If the commission arbitrates the dispute, it may also use the powers that are available to it under the Act.

2 Chapter 9 of the Act provides for appeals against particular decisions made by the commission.

- 2.2.6 While the dispute resolution procedure is being conducted, work must continue in accordance with this industrial instrument and the QES.
- 2.2.7 Subject to applicable work health and safety legislation, an employee must not unreasonably fail to comply with a direction by the Council to perform work, whether at the same or another workplace that is safe and appropriate for the employee to perform.
- 2.2.8 The parties to the dispute agree to be bound by a decision made by the commission in accordance with this term.

2.3 Individual Flexibility Arrangement

- 2.3.1 An employer and employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of this Agreement if—
 - (a) this Agreement deals with 1 or more of the following matters—
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (ii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- 2.3.2 The employer must ensure the terms of the individual flexibility arrangement—
 - (a) are only about matters required or permitted to be in this Agreement; and
 - (b) are not non-allowable provisions; and
 - (c) must not result, on balance, in an overall reduction in the entitlements or protections the employee has under this industrial instrument.
- 2.3.3 The employer must ensure the individual flexibility arrangement—
 - (a) is in writing and signed by the employer and employee; and
 - (b) states –
 - (i) the names of the employer and employee; and
 - (ii) the terms of this industrial instrument that will be varied by the arrangement; and
 - (iii) how the arrangement will vary the effect of the terms; and
 - (iv) how the arrangement will not result, on balance, in an overall reduction in the entitlements or protections the employee has under this industrial instrument; and
 - (v) the day on which the arrangement commences; and
 - (c) if the employee is under 18 years of age— is signed by a parent or guardian of the employee.

- 2.3.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 2.3.5 An individual flexibility arrangement may be terminated—
- (a) by either the employee or employer giving written notice of—
 - (i) a period agreed between the parties of up to 12 months; or
 - (ii) if no period has been agreed—28 days; or
 - (b) by the employer and employee at any time if they agree in writing to the termination.

2.4 Fixed Term Employment

- 2.4.1 A Fixed Term Employee is one who is engaged for a specified period of time or for a specified task, otherwise defined as a Maximum Term Employee under the Award.
- 2.4.2 A Fixed Term Employee's employment may be terminated by the Council before the contract's specified end date in the following circumstances:
- (a) by written agreement with the employee; or
 - (b) in the event of an incapacity which prevents the employee from performing the duties they were employed to perform; or
 - (c) in the event of misconduct; or
 - (d) in the event of poor performance of the employee following a performance review process and upon provision of applicable notice period under the Award applicable to non-Fixed Term Employees; or
 - (e) by Council upon the provision of six (6) months' pay in lieu of notice or the amount of wages due to the employee for the balance of the contract, whichever is the lesser amount.
- 2.4.3 A Fixed Term Employee may terminate their employment by the giving of four (4) weeks' notice or the forfeiture of wages for any shortfall in the four (4) weeks' period of notice.

2.5 Leading Hand Allowance

An employee in charge of a work crew (i.e. in charge of two (2) or more employees) shall receive an allowance of \$40.00 per week or a pro rata amount for part-time employees.

2.6 Secondary Employment

- 2.6.1 Employees must obtain the written consent of Council prior to taking up and/or engaging in secondary employment, which may not be unreasonably withheld by Council.
- 2.6.2 Upon application for consent by an employee, Council may, at its sole discretion, expressly prohibit an employee from taking up and/or engaging in secondary employment or other contract work if Council reasonably considers a conflict of interest may exist with current Council duties performed by the employee.

2.7 Higher Duties

Where an employee is instructed to perform duties or relieve another employee for which a higher rate of pay is prescribed, the employee will be paid the higher rate for the period in which the employee performed the duties attracting the higher rate.

Part 3 - Leave

3.1 Recreation Leave

3.1.1 Employees will be entitled to six (6) weeks Recreation Leave per year of service comprising: -

- (a) four (4) weeks of Annual Leave prescribed by the QES; and
- (b) an additional two (2) weeks leave in recognition of the remote location of the service area, various cultural events that occur during the year and in lieu of payment of specific Allowances under the Award as specified in clause 3.1.5 of this Agreement.

3.1.2 All Recreation Leave shall attract leave loading, except in the circumstances provided for in clause 3.1.4 where such entitlement is 'cashed out'.

3.1.3 Recreation Leave is to be taken at a time that is agreeable between the employee and Council.

3.1.4 This additional two (2) weeks Recreation Leave may, upon agreement between the employee and Council at the sole discretion of both, be 'cashed out' by the employee to receive an additional two (2) weeks pay per year. In such instance, such payment will not attract leave loading.

3.1.5 The additional two (2) weeks Recreation Leave will be granted to employees in lieu of following Allowances specified in the Award:

- (a) Local Government Industry Allowance;
- (b) Rubbish and Sanitary Operations Allowance;
- (c) First Aid Allowance;
- (d) Uniforms Allowance; and
- (e) Divisional and district allowances.

3.2 Annual Close Down

3.2.1 Council will close down its operations each year over the Christmas/New Year period.

3.2.2 Council will close at midday on Thursday 24 December 2015 and reopen on Monday 4 January 2016.

3.2.3 Council will close at midday on Friday 23 December 2016 and reopen on Tuesday 3 January 2017.

3.2.4 Employees who do not have enough Recreation Leave accrued to cover the period of close down (or any period thereof) shall take unpaid leave.

3.2.5 If Council's operational requirements require work to be performed during this period, Council may direct employees to work during the close down period.

3.3 Personal Leave

3.3.1 In addition to the ten (10) days Personal Leave provided by the QES, employees shall be granted an additional five (5) days Personal Leave to be credited upon commencement of an employee's employment, and on the anniversary date of their employment for every year thereafter.

3.3.2 The additional five (5) days Personal Leave shall accumulate from year to year.

3.3.3 Part-time employees shall receive the five (5) days on a pro rata basis.

3.3.4 Employees shall be required to produce a medical certificate completed by a medical practitioner as proof of lack of fitness to work when the absence from work is more than two (2) days. Failure by an employee to produce a medical certificate in contravention of this provision shall be considered misconduct by the employee.

3.3.5 Employees shall be required to produce a medical certificate completed by a medical practitioner as proof of lack of fitness to work in circumstances where in all reasonableness, at the sole discretion of Council, there appears to be a frequent pattern of absence (e.g. every Friday for three (3) consecutive weeks etc). When clause 3.3.5 applies and upon notice in writing by Council to the employee, the employee shall be required to provide a medical certificate for each and every personal leave claim for a period specified in the notice, which may not exceed six (6) months. Failure by an employee to produce a medical certificate in contravention of this provision shall be considered misconduct by the employee.

3.4 Bereavement Leave

3.4.1 An employee shall on the death of a member of their Immediate Family or Household, or as otherwise approved by Council under clause 3.4.4 of this Agreement, be entitled to up to three (3) days paid Bereavement Leave per event.

3.4.2 Where evidence of such death is not reasonably apparent to Council, proof of such death shall be furnished by the employee to the satisfaction of the Council. A failure to provide proof of death upon request by Council shall be misconduct by the employee.

3.4.3 "Immediate Family or Household" includes:

- Employee's spouse, including a former spouse, a defacto spouse or former defacto spouse, (including a spouse of the same sex as the Employee); and
- A child, ex-nuptial child, step-child, adopted child, ex-foster child of the Employee or Employees' spouse; and
- Parent, grandparent, grandchild, sister or brother of the Employee and of the Employee's spouse (such as the Employee's mother-in-law, father-in-law, grandparent-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law); and
- Step-father, step-mother, (also big uncle or big aunt of an indigenous Employee) half-brother, half-sister, step-brother and step-sister of the Employee; and
- Those who permanently live in the Employee's household.

3.4.4 The list of family members provided for in the definition of 'Immediate Family or Household' is not exhaustive and Council recognises that this may not meet that of all the cultural groups in Council's workforce. Management may also grant requests for Bereavement Leave in circumstances where the deceased is a person that occupied the same prominence in the employee's life as a family member identified in the 'Immediate Family or Household category'. Where an employee is obligated by their respective custom or religion to show their respect for a deceased person by participating in ceremony, Bereavement Leave will be granted.

3.4.5 In addition to specified Bereavement Leave entitlement, an employee may access other accrued paid leave, (including Recreation Leave or TOIL), or unpaid leave in circumstances where clause 3.4 applies, and the period of Bereavement Leave provided is insufficient.

3.5 Emergency Services Leave

3.5.1 An employee who engages in Voluntary Emergency Activity is entitled to paid leave for a period of up to five (5) days per year, subject to Council approval.

3.5.2 An employee engages in Voluntary Emergency Activity for the purposes of clause 3.5.1 of this Agreement if, and only if:

- (a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and
- (b) the employee engages in the activity on a voluntary basis; and
- (c) either:

- (i) the employee was requested by or on behalf of a Recognised Emergency Management Body to engage in the activity; or
- (ii) no such request was made, but it would be reasonable to expect the employee to engage in the activity.

3.5.3 A 'Recognised Emergency Management Body' is:

- (a) a body, or part of a body, that attends to emergencies and/or disasters;
- (b) a fire-fighting, civil defence or rescue body; or
- (c) any other body which involves securing the safety of persons or animals in an emergency/natural disaster or protecting property in an emergency or natural disaster

3.5.4 Emergency Services Leave is not cumulative.

3.6 Parental Leave

3.6.1 Parental Leave shall include:

- (a) Maternity leave;
- (b) Spousal leave;
- (c) Adoption leave; and
- (d) Surrogacy leave.

3.6.2 Paid Parental Leave entitlement shall be up to fourteen (14) weeks.

3.6.3 Eligibility for Parental Leave shall be determined by Council Policy.

3.7 Time Off in Lieu

3.7.1 Subject to Council's prior approval and mutual agreement between Council and an employee, an employee who works outside of the spread of ordinary working hours or in excess of their ordinary daily hours of duty on any day, may be granted Time Off in Lieu ("TOIL") of overtime worked on a time for time basis.

3.7.2 A maximum of two (2) days or 16 hours can be accrued at a time.

3.8 Payment of wages and salary

Wages and salary shall be paid fortnightly by electronic funds transfer into employee nominated bank accounts.

Signed on behalf of the Torres Strait Island Regional Council

FULL NAME Dania Ahwang
CAPACITY TO SIGN Chief Executive Officer
DATE 5 January 2015

IN THE PRESENCE OF:

FULL NAME: Jessica Cox
DATE 5 January 2015

Signed on behalf of the employees of the Torres Strait Island Council.

FULL NAME Kathy Cochran
CAPACITY TO SIGN Employee Representative
DATE 22 December 2014

IN THE PRESENCE OF:

FULL NAME: Evelyn Garnett
DATE 22 December 2014