

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: variation of the Queensland Public Service Officers and Other Employees Award – State 2015 [2022] QIRC 423*

PARTIES: **State of Queensland (Department of Transport and Main Roads)**
(Applicant)

v

Together Queensland, Industrial Union of Employees
(Respondent)

CASE NO.: MA/2022/1

PROCEEDING: Application to vary a modern award

DELIVERED ON: 2 November 2022

HEARING DATE: On the papers

MEMBER: McLennan IC

ORDER: **1. Variations are made to the *Queensland Public Service Officers and Other Employees Award – State 2015* being those contained in Schedule 1 to these reasons for decision.**

2. The variations contained in Schedule 1 will operate on and from 2 November 2022.

CATCHWORDS: INDUSTRIAL LAW – QUEENSLAND – AWARDS – variation of a modern award – application to make an order varying the *Queensland Public Service Officers and Other Employees Award – State 2015* pursuant to s 147 of the *Industrial Relations Act 2016* (Qld) – application to vary modern award granted

LEGISLATION: *Industrial Relations Act 2016* (Qld) s 147

Reasons for Decision

[1] On 12 May 2022, the State of Queensland (Department of Transport and Main Roads) (the Applicant) filed an application pursuant to s 147 of the *Industrial Relations Act 2016* (Qld) (the IR Act), to vary the *Queensland Public Service Officers and Other Employees Award – State 2015* (the Award).

[2] On 17 May 2022, the Industrial Registry issued the following correspondence to the named parties:

We note cl 2.13.1 of the *Transport and Main Roads Enterprise Bargaining Certified Agreement 2019* (the Certified Agreement) states that "Any changes to these Principles, during the life of the Agreement, will only take place by agreement of the parties. Such changes will be implemented by an agreed application by the parties to the Queensland Industrial Relations Commission (the Commission) to vary S1.3.1 of the *Queensland Public Service Officers and Other Employees Award – State 2015*."

While Together Queensland has been referred to in this Application, the other parties to the industrial instrument have not been. Clause 2.13.1 of the Certified Agreement requires agreement of the parties in plural, notwithstanding it may well be the case that only Together Queensland has coverage of membership of transport inspectors.

Whilst the email from Mr Wallace of 12 May 2022 states the Department and Together Queensland have collaborated and agreed on the attached variation of the relevant Award provisions, the Commission seeks Together's confirmation that is the case. Further, an indication from the other parties that they consent is required.

[3] The unions party to the Certified Agreement are:

- Together Queensland, Industrial Union of Employees (TQ);
- The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees;
- Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District; and
- United Voice, Industrial Union of Employees, Queensland.

[4] On 8 July 2022, the Applicant provided email correspondence from each union party to the Certified Agreement in which they expressed either consent or that they do not object to the proposed variation.

[5] The Application seeks to vary the Award with respect to shift rostering principles for transport inspectors.

[6] The Applicant contends the proposed variation relates to a commitment contained in cl 2.13.1 of the Certified Agreement which pertains specifically to a review of the shift rostering principles for transport inspectors:

The parties agree to review the Shift Rostering Principles as outlined under S1.3.1 of the *Queensland Public Service Officers and Other Employees Award - State 2015*.

The review is to commence 2 weeks from the date of certification of this Agreement with a view to being finalised no later than 9 months from the date of commencement of the review.

Any changes to these Principles, during the life of the Agreement, will only take place by agreement of the parties. Such changes will be implemented by an agreed application by the parties to the Queensland Industrial Relations Commission (the Commission) to vary S1.3.1 of the *Queensland Public Service Officers and Other Employees Award - State 2015*.

[7] The reasons for the variation sought was elaborated upon by TQ in subsequent email correspondence. These reasons are summarised below:

- the proposed changes reflect the outcomes of the working party reviewing the rostering principles for transport inspectors;
- the word schedule is being inserted in front of days off in (a) to reflect changes in terminology appearing in the modern award arising from the modernization process;
- the provisions provide that shifts preceding scheduled days off or rostered days off cannot end any later than midnight and the earliest the next shift can commence is 6:00am, guaranteeing employees have the benefit of whole days off;
- the variation to (b) clarify the arrangements when overtime on an additional day can be worked;
- (b) maintains the situation that consent is required and for those that are working 10 consecutive days it maintains the current arrangement that overtime can only be worked after the employee has had at least one day off;
- (b) provides for employees working just five consecutive days that the overtime can be worked on either of the first or second scheduled day off;
- the previous (b) only allowed overtime to be worked on the second scheduled day off – for these employees, six consecutive days would be worked for one week of a two week period and employees did not believe there was any merit in only allowing this to occur in the second week of the two week period;
- (c) and (d) are unchanged; and
- the previous (f) extinguished the overtime fatigue provisions from having operative effect if overtime is worked within the 10 hour period at the employee's request – the deletion of (f) means the overtime fatigue provisions will have effect regardless of who makes the request for the employee to do overtime.¹

¹ I note that the Respondent's submission refers to (e) being deleted but that appears to have been a typographical error as it is (f) that pertains to overtime fatigue, and that provision has been deleted in the consented variation.

- [8] Section 147 of the Act provides that the Commission may make or vary a modern award on its own initiative or by application to provide for fair and just employment conditions.
- [9] Having given consideration to the proposed variations, and the consent position of the parties to the said variations, I grant the application and make the necessary orders to vary the Award.

Orders

- [10] I make the following orders:
- 1. Variations are made to *the Queensland Public Service Officers and Other Employees Award – State 2015* being those contained in Schedule 1 to these reasons for decision.**
 - 2. The variations contained in Schedule 1 will operate on and from 2 November 2022.**

SCHEDULE 1

1. By deleting clause S1.3.1.1 - Shift rostering principles, of **Schedule 1 - Section 3 - Department of Transport and Main Roads**, and replacing it with the following clause:

S1.3.1.1 Shift rostering principles

- (a) Employees will be provided with 2 consecutive scheduled days off in every 7. Where the roster provides for 10 consecutive days, employees will be provided with 4 consecutive scheduled days off. The shift preceding a scheduled day off or a rostered day off shall finish at 12 midnight at the latest. Where this occurs the next rostered working day will not commence any earlier than 6.00am.
- (b) Overtime shifts/changes of duty may be worked by consent on either the first or the second scheduled day off within a seven day roster cycle. Where the roster provides for 10 consecutive days, overtime shifts may be worked by consent after one whole scheduled day off.
- (c) Rosters are not to provide for a permanent night shift. A night shift will commence after 1800 and before midnight.
- (d) During a rostered period, there will be no more than a 6 hour variance between the shift commencement time on the first day of the rostered period and the last day of the rostered period. This will apply unless there is a day off between shifts or an operational gap as prescribed at S1.3.1.1(e). In addition, there will be no more than a 2 hour variance between shift start times from one day to the next.
- (e) There shall be an allowable one operational gap per roster cycle. An operational gap is constituted by a shift variance from one shift to the next of more than 6 hours.