

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: In the matter of the making of Modern Awards – Ambulance Service Employees Award - State 2016* [2016] QIRC 079

PARTIES: Queensland Ambulance Service
United Voice, Industrial Union of Employees Queensland

CASE NO: MAP/2016/6

PROCEEDING: Making of a modern award

DELIVERED ON: 1 August 2016

HEARING DATE: 28 July 2016

HEARD AT: Brisbane

MEMBER: Deputy President O'Connor
Industrial Commissioner Fisher
Industrial Commissioner Neate

ORDERS:

- 1. That the words “minimum safety net” be deleted from Clause 1 (Title) of the Award Modernisation (AMOD) Team’s Exposure Draft of the proposed *Ambulance Service Employees Award – State 2016*.**
- 2. That Clause 5 of the Award Modernisation (AMOD) Team’s Exposure Draft of the proposed *Ambulance Service Employees Award – State 2016* be deleted and the following be inserted in lieu thereof:**
“This Award together with the QES provide for a minimum safety net of enforceable conditions of employment for employees covered by this Award.”
- 3. That the *Ambulance Service Employees Award – State 2016* be made pursuant to section 140CE(1)(a) of the *Industrial Relations Act 1999* (“the Act”) and operate on and from 1 August 2016, subject to the provisions of section 824 of the Act.**

4. That the *Ambulance Service Employees' Award – State 2012* be repealed on and from 1 August 2016, subject to the provisions of section 824 of the Act.

CATCHWORDS:

INDUSTRIAL LAW - AWARD MODERNISATION - MAKING OF A MODERN AWARD - Section 140C(1) of the *Industrial Relations Act 1999* - request from the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships - *Ambulance Service Employees Award - State 2016* Modern Award made.

CASES:

Industrial Relations Act 1999, Chapter 5, Part 8, Division 2, ss 140BB, 140C(1), 140CE(1)(a), 824

APPEARANCES:

Ms P. Everingham and Ms C. Axelby for Queensland Ambulance Service.

Mr J. Merrell, Counsel directly instructed by United Voice, Industrial Union of Employees Queensland.

Reasons for Decision

- [1] The Queensland Industrial Relations Commission ("the Commission") recommenced the award modernisation process following the passing of amendments to the *Industrial Relations Act 1999* ("the Act") and the issuing of a variation to the existing Ministerial Request ("the Consolidated Request") on 17 July 2015.
- [2] Section 140BB of the Act sets out the Commission's Award Modernisation functions, as follows:

"140BB Commission's award modernisation function"

- (1) The functions of the commission include carrying out a process (*award modernisation process*) to reform and modernise pre-modernisation awards.
- (2) In performing its functions under this part, the commission must have regard to the following factors -
 - (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 this Act; and
- (j) the representation rights of organisations and associations under this Act.

(3) This section does not limit section 140D."

[3] In accordance with Chapter 5, Part 8, Division 2 of the Act (i.e. the Award Modernisation process provisions of the Act) and the Consolidated Request under s 140C(1) of the Act by the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, the Minister responsible for the Industrial Relations portfolio ("the Minister"), the Award Modernisation ("AMOD") Team of the Commission prepared an Exposure Draft of a proposed *Ambulance Service Employees Award - State 2016* ("the Proposed Award").

[4] On 24 June 2016, Deputy President Bloomfield referred a final version of the Proposed Award to Deputy President O'Connor for the consideration of a Full Bench of the Commission. The terms of the Proposed Award were agreed between the parties and the AMOD Team, except for the wording of Clause 1 which provides:

"Title

This minimum safety net award is known as the Ambulance Service Employees Award – State 2016."

[5] The parties jointly objected to the words "...minimum safety net ..." being included in the Title provision.

[6] On 8 July 2016, interested organisations were invited to make written submissions on Clause 1 as were those interested parties who raised an objection to any submission made. Both the Queensland Ambulance Service (QAS) and United Voice made submissions. No objections to their submissions were received.

[7] On 20 July 2016, Deputy President Bloomfield provided supplementary referral advice to the Full Bench (and copied that advice to the QAS and United Voice). This advice was considered by the Full Bench prior the matter being heard.

[8] The matter was heard by the Full Bench on 28 July 2016. Counsel for United Voice, Mr J Merrell, made additional submissions in support of the parties' consent position for the removal of the words "minimum safety net" from Clause 1.

[9] Mr Merrell contended that, after participating in the award modernisation process as contemplated in paragraphs 14(a) to 14(f) of the award modernisation request, the QAS and United Voice reached agreement that Clause 1 was not the appropriate provision to

put a reader on notice that the Award, along with the Queensland Employment Standards, provided a minimum safety net of conditions for covered employees. He submitted that Clause 5, entitled "The Queensland Employment Standards and this Award", was the more appropriate provision. Clause 5 in the Proposed Award reads:

"The QES and this Award contain the minimum safety net conditions of employment for employees covered by this Award."

[10] In support of that contention, Mr Merrell referred to paragraphs in ss 140BA, 140D(1) and 273(1)(a) of the Act, which state that modernised awards, together with the Queensland Employment Standards, provide a fair minimum safety net of enforceable conditions of employment for employees. He submitted that any reference to a "minimum safety net award" in Clause 1 may lead to confusion, as the Award acts in tandem with the Queensland Employment Standards to provide that safety net.

[11] In support of recasting Clause 1, the QAS submitted that:

- (a) the words of the proposed Clause 1 replicate the words used in the corresponding clause of the existing *Ambulance Service Employees' Award - State 2012*;
- (b) there is no requirement in the Act or the Minister's award modernisation request that the words "minimum safety net" be included in the title of a modern award;
- (c) as Clause 1 is the title clause of the proposed Award, the inclusion of the words "minimum safety net" in that clause has no substantive effect;
- (d) the words "minimum safety net" are included in Clause 5 of the Proposed Award, which is the relevant, substantive clause in which to include them in accordance with s 140BA(b) of the Act; and
- (e) it is the consent position of the parties to which the Proposed Award applies.

[12] The relevant provisions of the Act are:

"140BA Object of modernising awards

140BA The principal object of this part is to provide for the modernisation of awards so they –

...

(b) together with the Queensland Employment Standards, provide for a fair minimum safety net of enforceable conditions of employment for employees; and

..."

"140D Modern awards objectives

- (1) In exercising its chapter 5A powers, the commission must ensure modern awards, together with the Queensland Employment Standards, provide a minimum safety net of employment conditions that is fair and relevant.

..."

"273 Commission's functions

- (1) The commission's functions include the following –
- (a) establishing and maintaining a system of non-discriminatory awards that, together with the Queensland Employment Standards, provide for a fair minimum safety net of enforceable conditions of employment for employees;

..."

- [13] The Full Bench accepts the submission that, where there is consistency in the requirements of enabling legislation, it is desirable that a degree of consistency be adhered to in the format of modern awards. Accordingly, the format utilised by the Australian Industrial Relations Commission and, more recently, the Fair Work Commission in relation to title clauses should be adopted by this Commission. The Fair Work Commission's consolidated *Ambulance and Patient Transport Industry Award 2010* was submitted as an example. The title provision of that award reads:

"1. Title

This award is the Ambulance and Patient Transport Industry Award 2010."

- [14] The consent position arrived at by QAS and United Voice, whilst not determinative, is a relevant issue when the Full Bench is considering the making of modern awards. Indeed, paragraph 13 of the Consolidated Request states the Commission "must have due regard" to any agreement reached by the parties on a particular matter for inclusion in a modern award.

- [15] Mr Merrell also contended the Act does not require the title clause to refer to "minimum safety net awards", and other awards that have descriptions such as "paid rates awards" do not contain those words in the title provision. Mr Merrell described the Commission's previous Practice Note¹ (now obsolete) for parties seeking to file an application for a new award to be made pursuant to s 80 of the Act. That practice note dealt with the format of new awards and provided that the title clause should simply refer to the title of the award. It did not make any reference to the fact that an award was a "paid rates award" etc.

- [16] The Full Bench agrees that Clause 1 of the Award should provide:

"This award is known as the *Ambulance Service Employees Award – State 2016*."

¹ Queensland Industrial Relations Commission, *Practice Note (PN9) - Format of Awards* (2004) 176 QGIG 498, 498.

[17] During the hearing, the Full Bench expressed the view that the wording of Clause 5 in the Proposed Award should be amended to reflect the wording of ss 140BA(b), 140D(1) and 273(1)(a) of the Act. It was suggested the amended wording be as follows:

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

[18] Both United Voice and the QAS indicated their support for the proposed recasting of Clause 5. As a consequence, the Full Bench agreed to amend Clause 5 in the terms expressed above.

[19] The Full Bench, after considering the Proposed Award and the required amendments to clauses 1 and 5, and being satisfied that the Proposed Award complies with the requirements of the Act in relation to modern awards; is consistent with the statutory objects of the award modernisation process; and meets the requirements of the Minister's Consolidated Request, is of the view that the Proposed Award ought to be made in the terms of the Award attached to these reasons and operate on and from 1 August 2016.

[20] Accordingly, the Full Bench makes the following orders:

1. That the words "minimum safety net" be deleted from Clause 1 (Title) of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Ambulance Service Employees Award – State 2016*.
2. That Clause 5 of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Ambulance Service Employees Award – State 2016* be deleted and the following be inserted in lieu thereof:

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

3. That the *Ambulance Service Employees Award – State 2016* be made pursuant to section 140CE(1)(a) of the *Industrial Relations Act 1999* ("the Act") and operate on and from 1 August 2016, subject to the provisions of section 824 of the Act.
4. That the *Ambulance Service Employees' Award – State 2012* be repealed on and from 1 August 2016, subject to the provisions of section 824 of the Act.