

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 125 - making, amending and repealing awards

**Local Government Association of Queensland Ltd
AND The Australian Workers' Union of Employees, Queensland (A/2011/42)**

CAFE, RESTAURANT AND CATERING AWARD - STATE (EXCLUDING SOUTH-EAST QUEENSLAND) 2003

COMMISSIONER FISHER

31 January 2012

AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 31 January 2012 this Commission orders that the said Award be amended as follows as from 31 January 2012:

1. By deleting clause 4.7.1(a) and inserting the following in lieu thereof:
 - (a) discrimination on the basis of sex, relationship status, family responsibilities, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality and association with, or relation to, a person identified on the basis of the above attributes;
2. By deleting clauses 4.10.12(a) and 4.10.12(b) and inserting the following in lieu thereof:
 - (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.10 shall not apply to an employer that employs employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
3. By deleting clause 5.6 and inserting the following in lieu thereof:

5.6 Occupational superannuation

5.6.1 *Local Government Employees*

All Local Governments and Local Government Entities subject to this Award must comply with superannuation arrangements prescribed in the *Local Government Act 2009* and *Local Government (Operations) Regulation 2010*.

Local Governments and their Entities employing persons defined as being "non-contributory members" of the LG Super Scheme pursuant to s. 223 of the *Local Government Act 2009*, shall on behalf of such employees, contribute an amount to the LG Super Scheme that must be made to avoid being required to pay the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992* in respect of such employees.

5.6.2 *Non-Local Government Employees*

In all other circumstances, in addition to all other entitlements pursuant to this Award, all eligible employees (as defined in clause 5.6.2(a)(ii)) who are not otherwise employed by a Local Government or Local Government Entity for which the LG Super Scheme applies, shall be entitled to occupational superannuation contributions paid by the relevant employer. Such contributions shall be paid into an approved fund (as defined in clause 5.6.2. (a)(i)) in accordance with clause 5.6.2.

5.6.2(a) *Definitions*

- (i) An "approved fund" means:
 - (A) Host Super;
 - (B) Sunsuper;
 - (C) MTAA Industry Superannuation fund;
 - (D) Metway Super;

- (E) A fund to which the employer was at 24 May 1989, contributing superannuation payments on behalf of the employer's employees and which complies with the requirements of the relevant Commonwealth occupational superannuation legislation;
- (F) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award or an agreement approved by an Industrial Tribunal whether State or Federal jurisdiction which already has practical application to the majority of Award employees of that employer.
- (ii) "Eligible employee" for clause 5.6.2 means an employee who is covered by this Award, and who has been employed by an employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of this period, superannuation contributions shall then be made in accordance with clause 5.6.2(b) effective from the commencement of that qualifying period.
- (iii) "Ordinary time earnings" for the purposes of clause 5.6.2 means the gross ordinary pay the employee receives for the ordinary hours of work performed in the relevant pay period and includes supervisory allowances, shift allowances as prescribed in clause 5.5 and Divisional and District allowances, where applicable.

5.6.2(b) *Contributions*

- (i) Amount - As from 1 January 2005 every employer shall contribute on behalf of each eligible employee an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund, as defined in this clause. Each such payment of contributions shall be rounded off to the nearest ten (10) cents:

Provided that where an employee is absent and is receiving by way of workers' compensation an amount of money no less than the award rate of pay the contribution shall be calculated at 3%.

- (ii) The employer may suspend contributions on behalf of an employee for any period when the employee is absent from work on unpaid leave:

Provided that in relation to an eligible employee an employer shall continue to make contributions in respect of any period during which an employee is absent from work on workers' compensation up to a maximum of 26 weeks.

5.6.2(c) *Future movements*

The amount of contribution as prescribed in clause 5.6.2(b) shall be adjusted to accord with movements in the applicable rate of wage as set out in clause 5.2 for the particular classification of employee. Such contribution shall be rounded off to the nearest 10 cents.

5.6.2(d) *General*

- (i) The employer shall remit contributions to the approved fund on a monthly basis.
- (ii) Eligible employees may personally make contributions to the approved fund in addition to the employer contributions prescribed by clause 5.6.2(b). The employer shall, at the employee's written request, make arrangements for such authorised deductions from the employee's pay to be forwarded to the administrators of the approved fund.
- (iii) No additional amount shall be charged by the employer for the establishment, administration, management or any other charges in connection with the approved fund.
- (iv) Nothing in clause 5.6.2 shall act to diminish the rights and responsibilities of the Trustees of an approved fund as set out in accordance with the Deed of Trust and Rules thereto as amended from time to time.

4. By deleting clause 7.3 and inserting the following in lieu thereof:

7.3 Long service leave

All employees covered by this Award are entitled to long service leave on full pay under, subject to, and in accordance with, the provisions of Chapter 2, Part 3, sections 42-58 of the Act as amended from time to time.

Portability of long service leave entitlements for Local Government employees is provided pursuant to Division 4; Part 3; Chapter 5 - Administration, of the *Local Government (Operations) Regulation 2010*.

5. By deleting clause 7.4 and inserting the following in lieu thereof:

7.4 Family leave

The provisions of the *Family Leave Award 2003* apply to and are deemed to form part of this Award.

7.4.1 It is to be noted that:

- (a) part-time work can be performed by agreement in the circumstances specified in the *Family Leave Award 2003*;
- (b) a copy of the *Family Leave Award 2003* is required to be displayed in accordance with section 697 of the Act.

7.4.2 The *Family Leave Award 2003* also provides for the terms and conditions of leave associated with:

- (a) Maternity leave;
- (b) Parental leave;
- (c) Adoption leave; and
- (d) Carers leave for the care and support of the employee's immediate family or household.

6. By deleting clause 7.5.1 and inserting the following in lieu thereof:

7.5.1 Full-time and part-time employees shall, on the death of a member of their immediate family or household be entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

7. By deleting clauses 11.1.3(b)(ii) and (iii) and inserting the following in lieu thereof:

(ii) has made a written request to the employer that they do not want their record inspected.

8. By deleting clause 11.2.4 and inserting the following in lieu thereof:

11.2.4 Such records shall be open to inspection during the employer's business hours by an inspector of the Department of Justice and Attorney-General, in accordance with section 371 of the Act, or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

Dated 31 January 2012.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Operative Date: 31 January 2012
Amendment - Award review
Released: 24 February 2012