

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: In the matter of the making of Modern Awards - Brisbane City Council Operational and Trade Employees Award - State 2016* [2016] QIRC 110

PARTIES: Brisbane City Council

Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland

Construction, Forestry, Mining and Energy Industrial Union of Employees, Queensland

Electrical Trades Union of Employees Queensland

Plumbers and Gasfitters Employees Union of Queensland, Union of Employees

The Australian Workers' Union of Employees, Queensland

Transport Workers' Union of Australia, Union of Employees (Queensland Branch)

United Voice, Industrial Union of Employees, Queensland

CASE NO: MAP/2016/13

PROCEEDING: Making of a modern award

DELIVERED ON: 17 October 2016

HEARING DATE: 7 October 2016

HEARD AT: Brisbane

MEMBERS: Deputy President Swan  
Industrial Commissioner Fisher  
Industrial Commissioner Black

ORDERS: **1. That the *Brisbane City Council Operational and Trade 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 7 October 2016, subject to the provisions of section 824 of the Act.

2. Subject to s 824 of the Act, this Award operates on and from 7 October 2016 with the exception of the undermentioned clauses which shall operate from a prospective date to be decided by a Full Bench of the Commission:

- Clause 13.1.3;
- Clause 15.3(c) and (d);
- Clauses 18.2(a), (b), (c) and (j); and
- Clause 31.

3. That the following Awards be repealed on and from 7 October 2016, subject to the provisions of s 824 of the Act:

*Brisbane City Council - Construction, Maintenance and General Award 2003;*

*Brisbane City Council - Miscellaneous Workers' Award 2012; and*

*Brisbane City Council Plant Operators' Award 2012.*

4. In so far as they cover Brisbane City Council the following Awards are to be repealed on and from 7 October 2016, subject to the provisions of s 824 of the Act:

*Building Trades Public Sector Award - State 2012; and*

*Engineering Award - State 2012.*

**CATCHWORDS:**

INDUSTRIAL LAW - AWARD MODERNISATION - MAKING OF A MODERN AWARD - Section 140C(1) of the *Industrial Relations Act 1999 - Brisbane City Council Operational and Trade Employees Award - State 2016* Modern Award made.

**CASES:**

*Industrial Relations Act 1999*, Chapter 5, Part 8, Division 2, ss 140BA, 140BB, 140C(1), 140CE(1)(a), 140D, 273, 824

- APPEARANCES: Mr D. Groessler, Ms A. Hastie and Ms A. Grendon for Brisbane City Council.
- Ms K. Allen for Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland; Electrical Trades Union of Employees Queensland; Plumbers and Gasfitters Employees Union of Queensland, Union of Employees; and United Voice, Industrial Union of Employees.
- Mr A. Borg for Construction, Forestry, Mining and Energy Industrial Union of Employees, Queensland.
- Mr B. Watson for The Australian Workers' Union of Employees, Queensland.
- Ms M. Cerrato for Transport Workers' Union of Australia, Union of Employees (Queensland Branch).

### 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. A new Consolidated Request was issued by the Honourable Grace Grace, Minister for Employment and Industrial Relations (the Minister) on 6 June 2016.
- [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 Minister, the Award Modernisation Team of the Commission prepared an Exposure Draft of a proposed *Brisbane City Council Operational and Trade Employees Award - State 2016* (the Proposed Award).
- [4] On 5 October 2016, Deputy President Bloomfield referred a version of the Proposed Award to Deputy President O'Connor for the consideration of the Full Bench. The parties to the Proposed Award had reached substantial agreement on the provisions contained within the Award however several clauses will require more discussion before they are fully agreed. Due to the implications of a Modern Award covering Council operational and trade employees not being made by 7 October 2016, the Proposed Award was referred to this Full Bench and listed for hearing on 7 October 2016.

### **Legislative Provisions**

- [5] The relevant legislative provisions are:

#### **"140BA Object of modernising awards**

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;

..."

**Consideration**

- [6] The matter was heard on 7 October 2016. As indicated by Deputy President Bloomfield on 5 October 2016 the clauses which are still to be agreed are Clause 13.1.3 (**Overtime meal allowance**); Clauses 15.3(c) and (d) **Payment for working ordinary hours - day workers**); Clauses 18.2(a), (b), (c) and (j) **Payment for overtime - day workers**; and Clause 31 (**Industrial relations education leave**).
- [7] The parties confirmed their consent position on the making of the Proposed Award with the exception of the clauses outlined in paragraph [6] with the relevant provisions yet to be finalised.
- [8] The Full Bench, after considering the Proposed Award, 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 7 October 2016 with the exception of Clauses 13.1.3, 15.3(c) and (d); 18.2(a), (b), (c) and (j) and 31 which shall operate from a prospective date to be decided by the Full Bench.
- [9] Accordingly, the Full Bench makes the following orders:
1. That the *Brisbane City Council Operational and Trade 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 7 October 2016, subject to the provisions of section 824 of the Act.
  2. Subject to s 824 of the Act, this Award operates on and from 7 October 2016 with the exception of the undermentioned clauses which shall operate from a prospective date to be decided by a Full Bench of the Commission:
    - Clause 13.1.3;
    - Clause 15.3(c) and (d);
    - Clauses 18.2(a), (b), (c) and (j); and
    - Clause 31.

3. That the following Awards be repealed on and from 7 October 2016, subject to the provisions of s 824 of the Act:

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4. In so far as they cover Brisbane City Council the following Awards are to be repealed on and from 7 October 2016, subject to the provisions of s 824 of the Act:

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*Engineering Award - State 2012.*