

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – ss. 140G and 140GC – Variation of modern award
ss. 140G(3)(a) and 140GC(2)(a) – Commission acting on its own initiative

BRISBANE CITY COUNCIL
SALARIED STAFF AWARD – STATE 2016

Matter No. MA/2017/4

DEPUTY PRESIDENT O'CONNOR
DEPUTY PRESIDENT SWAN
INDUSTRIAL COMMISSIONER THOMPSON

1 March 2017

DETERMINATION

This matter coming on for hearing before the Commission at Brisbane on 1 March 2017 this Commission orders that the said Award be varied as follows as from 1 March 2017:

1. By deleting clause 2 and inserting the following in lieu thereof:

2. Operation

This Award operates from 7 October 2016.

2. In clause 3:

- (a) By deleting the definition of "Act" and inserting the following in lieu thereof:

Act means the *Industrial Relations Act 2016*

- (b) By deleting the definition of "QES" and inserting the following in lieu thereof:

QES means the Queensland Employment Standards contained in Part 3 of Chapter 2 of the Act

- (c) By deleting the definition of "registered medical practitioner" and inserting the following in lieu thereof:

registered medical practitioner means a medical practitioner registered with the Medical Board of Australia, but shall not include the services of osteopaths, chiropractors, acupuncturists, naturopaths, herbalists and homeopaths

3. By deleting clause 4(f) and inserting the following in lieu thereof:

- (f) Subject to clause 4(g) Council and a professional employee may agree that the employee be employed on a Specialist and Senior Professional (SSP) contract where the work being performed falls within a classification at Band 4 or above contained in Schedule 3.

4. By inserting a new clause 4(g) as follows:

- (g) (i) Clause 4(f) may only be applied if:

(A) the employee's role is a professional role that requires a relevant tertiary degree; and

(B) the employee's role is in a specific job family prescribed by Council.

- (ii) An SSP contract will not alter an employee's position regarding Award coverage and the employee must be no worse off under the contract than under the Award, if considered on an overall basis.
- (iii) An employee on an SSP contract is not entitled to payment or other credit for overtime, penalties, flex-time or allowances.

5. By deleting clause 6.1(c) and inserting the following in lieu thereof:

- (c) Any proposed genuine agreement reached between the Council and employees in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with Chapter 4 of the Act and is to have no force or effect until approval is given.

6. By deleting clause 8.1 and inserting the following in lieu thereof:

8.1 Full-time employment

A full-time employee is one who is engaged as such to work an average of 36 hours 15 minutes ordinary time per week, or as otherwise provided by clause 15.1(d).

7. By deleting clause 8.3(a)(iii) and inserting the following in lieu thereof:

- (iii) Flexible permanent part-time employees, other than those employees working shift work in accordance with clause 15.3, who work outside the spread of hours 0700 to 1800 Monday to Friday, inclusive, or in excess of the hours in clause 8.3(a)(ii), shall be paid for that work at overtime rates in accordance with clause 18.1.

8. By deleting clause 8.5(d) and inserting the following in lieu thereof:

- (d) The ordinary working hours of a casual employee shall not exceed:
 - (i) 7 hours 15 minutes on any one day unless replacing an employee working in excess of 7 hours 15 minutes per day; or
 - (ii) 36 hours 15 minutes each week,

after which overtime rates are to be paid in accordance with clause 18.1.

9. By deleting the heading and introductory paragraph of clause 9 and inserting the following in lieu thereof:

9. Termination of employment

Provisions dealing with notice of termination are provided for in Division 13 of the QES. Clauses 9.1 to 9.5 supplement the QES provisions.

10. By deleting the Note under the table in clause 9.1(c) and inserting the following in lieu thereof:

[♦ **Note:** The period of notice is to be increased by one week in the case of an employee aged 45 years or more who has completed at least 2 years of continuous service with the Council.]

11. By deleting clause 10.1 and inserting the following in lieu thereof:

10.1 Redundancy pay

Redundancy pay is provided for in Division 13 of the QES. Clauses 9.1(c) and 10.2 to 10.9 supplement the QES provisions.

12. By deleting clause 12.6(d) and inserting the following in lieu thereof:
- (d) Assessment for incremental progression, as provided in clause 12.6(b), shall occur:
 - (i) at six monthly intervals for employees working within Bands 1 to 4; and
 - (ii) at twelve monthly intervals for employees working within Bands 5 to 8.
13. By deleting clause 15.1(b) and inserting the following in lieu thereof:
- (b) Subject to clauses 15.1(f) and (g) a standard day shall be 7 hours 15 minutes worked within the ordinary spread of hours of 0800 and 1645 Monday to Friday, with not more than one hour for an unpaid meal break, except where flexible working hours, rosters, shift work or other arrangements are in place.
14. By deleting clause 15.3(m) and inserting the following in lieu thereof:
- (m) Non-continuous shift workers who work overtime which is:
 - (i) in addition to an ordinary rostered shift which did not attract a shift penalty; or
 - (ii) worked on a weekend and does not extend continuously into or out of an ordinary rostered shift,shall be paid in accordance with the provisions of clause 18 for all such overtime worked.
15. By deleting clause 18.1(e) and inserting the following in lieu thereof:
- (e) Employees in receipt of a stand by allowance prescribed in clause 18.5 who are called out to perform emergency work outside their ordinary working hours will be paid for a minimum of 2 hours:
 - (i) from Monday to Saturday inclusive: at the rate of time and one-half, or
 - (ii) on Sunday: at the rate of double time.
16. By deleting clause 18.2(b) and inserting the following in lieu thereof:
- (b) Overtime worked by an employee who is recalled to work after their ordinary ceasing time, or who is on stand by in accordance with clause 18.5, shall not be regarded as overtime for the purposes of clause 18.2(a) where the actual time worked is less than 3 hours on such recall or on each of such recalls.
17. By deleting clause 18.5 and inserting the following in lieu thereof:

18.5 Stand by allowance

- (b) The Council may require an employee to stand by and be ready and available to perform emergency work outside ordinary working hours.
- (c) An employee required to stand by for emergency work shall be paid an allowance of 10% of the weekly rate for Band 6, pay point 1 for each week, or part thereof, during which the employee is required to stand by. All work performed by such employee at the Council's premises or work site outside ordinary working hours shall be paid for at the call out overtime rates prescribed at clause 18.1(e).
- (d) An employee required to stand by for emergency work on any public holiday shall have one day added to the employee's annual leave for each public holiday on which the employee is required to stand by.

- (e) An employee who is required to remain within a designated site of the Council's operations during periods of stand by shall be paid the stand by allowance as specified in clause 18.5(b) plus an additional 30% of that allowance.

18. By deleting the heading and introductory paragraph of clause 19 and inserting the following in lieu thereof:

19. Annual leave

Annual leave is provided for in Division 5 of the QES. Clauses 19.1 to 19.3 supplement the QES.

19. By deleting clause 19.3(a) and inserting the following in lieu thereof:

- (a) A shift worker proceeding on annual leave shall be paid:
 - (i) an amount equal to the ordinary salary being paid to the employee immediately before the employee takes the leave for the period of such leave calculated according to the employee's roster or projected roster, including Saturdays, Sundays, public holidays and shift allowances prescribed in clause 15.3; or
 - (ii) an amount equal to the ordinary salary being paid to the employee immediately before the employee takes the leave for the period of such leave plus a loading of 17.5% on 4 or 5 weeks' annual leave as the case may be, calculated on the rate of wage prescribed in clause 12.2 for their classification and paypoint,

whichever is the higher.

20. By deleting the heading and introductory paragraph of clause 20 and inserting the following in lieu thereof:

20. Personal leave

Personal leave is provided for in Division 6 of the QES. Clauses 20.1 to 20.4 supplement the QES.

21. By deleting clause 20.1(e)(i) and inserting the following in lieu thereof:

- (i) Who is unable to perform their duties on account of illness or injury (except for those covered by workers' compensation).

22. By deleting clause 21(a) and inserting the following in lieu thereof:

- (a) Bereavement leave is provided for in Division 6 of the QES. Clause 21(b) supplements the QES.

23. By deleting clause 22(a) and inserting the following in lieu thereof:

- (a) Parental leave is provided for in Division 8 of the QES and covers:
 - (i) birth-related leave for an employee who is pregnant or whose spouse gives birth;
 - (ii) adoption leave; and
 - (iii) surrogacy leave.

24. By deleting clause 22.1(a) and inserting the following in lieu thereof:

- (a) Unless agreed otherwise between the Council and the employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth of their child. If recommended by a registered medical practitioner an employee may commence unpaid parental leave at any time during the term of the pregnancy.

25. By deleting the heading and introductory paragraph of clause 23 and inserting the following in lieu thereof:

23. Long service leave

Long service leave, including for casual employees, is provided for in Division 9 of the QES. Clauses 23(a) to (f) supplement the QES.

26. By deleting the heading, introductory paragraph and clause (a) of clause 24 and inserting the following in lieu thereof:

24. Public holidays

Public holidays are provided for in Division 10 of the QES. The following clauses supplement the QES provisions.

- (a) All work performed by an employee on:

- 1 January (New Year's Day)
- 26 January (Australia Day)
- Good Friday
- Easter Saturday (The day after Good Friday)
- Easter Monday
- 25 April (ANZAC Day)
- Birthday of the Sovereign
- Labour Day
- Show Holiday
- 25 December (Christmas Day)
- 26 December (Boxing Day), or
- any day appointed under the *Holidays Act 1983* to be kept in place of any such holiday,

shall be paid for at the rate of double time and one-half with a minimum payment as for 2 hours' work.

27. By deleting clause 25 and inserting the following in lieu thereof:

25. Jury service

Jury service leave is provided for in Division 12 of the QES.

28. By deleting clause 29 and inserting the following in lieu thereof:

29. Right of entry

- (a) Authorised industrial officer

- (i) An 'authorised industrial officer' is any union official holding a current authority issued by the Industrial Registrar.
- (ii) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the union.

- (b) Entry procedure

- (i) An authorised industrial officer may enter a workplace at which the Council carries on a calling of the officer's organisation, during the Council's business hours, to exercise a power under Chapter 9, Part 1, Division 5, Subdivision 2 of the Act as long as the authorised industrial officer:

- (A) has notified the Council or the Council's representative of the officer's presence; and
 - (B) produces their authorisation, if required by the Council or the Council's representative.
 - (ii) Clause 29(b)(i) does not apply if, on entering the workplace, the officer discovers that neither the Council nor the Council's representative having charge of the workplace is present.
 - (iii) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.
 - (iv) If the authorised industrial officer does not comply with a condition of clause 29(b)(i) the authorised industrial officer may be treated as a trespasser.
- (c) Inspection of records
- (i) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 339 of the Act.
 - (ii) An authorised industrial officer is entitled to inspect such time and wages records of any current employee except if the employee:
 - (A) is ineligible to become a member of the authorised industrial officer's union; or
 - (B) has made a written request to the Council that they do not want their record inspected.
 - (iii) The authorised industrial officer may make a copy of the record, but cannot require any help from the Council.
 - (iv) A person must not, by threats or intimidation, persuade or attempt to persuade an employee or prospective employee to make, or refuse to make, a written request to the Council or prospective employer that the record not be available for inspection by an authorised industrial officer.
- (d) Discussions with employees
- An authorised industrial officer is entitled to discuss with the Council, or a member or employee eligible to become a member of the union:
- (i) matters under the Act during working or non-working time; and
 - (ii) any other matter with a member or employee eligible to become a member of the union, during non-working time.
- (e) Conduct
- (i) The Council must not obstruct the authorised industrial officer exercising their right of entry powers.
 - (ii) An authorised industrial officer must not wilfully obstruct the Council, or an employee during the employee's working time.

Note: Clause 29 - Right of entry, deals with comparable provisions contained within the Act. In order to ensure the currency of existing legal requirements parties are advised to refer to Chapter 9, Part 1, Division 5 of the Act as amended from time to time.

Brisbane City Council Salaried Staff Award – State 2016

Dated: 1 March 2017

By the Commission,
M. Shelley,
Deputy Industrial Registrar.

Operative Date: 1 March 2017
Determination - Correction of error

Released: 6 March 2017