

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: In the matter of the making of Modern Awards – Correctional Employees Award - State 2015* [2016] QIRC 11

PARTIES: **State of Queensland (Department of Justice and Attorney General)**
Together Queensland, Industrial Union of Employees

CASE NO: MAP/2015/10

PROCEEDING: Making of a modern award

DELIVERED ON: 29 January 2016

HEARING DATE: 11 December 2015

HEARD AT: Brisbane

MEMBERS: Deputy President O'Connor
Deputy President Kaufman
Industrial Commissioner Neate

ORDERS:

- 1. That the *Queensland Correctional Employees Award - State 2015* be made pursuant to section 140CE(1)(a) of the *Industrial Relations Act 1999* ("the Act") and operate on and from 11 December 2015, subject to the provisions of section 824 of the Act.**
- 2. That the *Department of Community Safety - Queensland Corrective Services - Correctional Employees' Award - State 2012* be repealed on and from 11 December 2015, subject to the provisions of section 824 of the Act.**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 - Whether the Award has the effect of reducing entitlements for workers – Whether the Award is consistent

with the intention of Award modernisation - *Correctional Employees Award - State 2015* - Modern Award made.

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

APPEARANCES: Mr L. Casey for the State of Queensland (Department of Justice and Attorney General, Queensland Corrective Services)

Mr M. Thomas for Together Queensland, Industrial Union of Employees

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) - Award Modernisation by the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships ("the Minister"), the Award Modernisation Team ("AMOD Team") of the Commission prepared an Exposure Draft of a proposed *Correctional Employees Award - State 2015* ("the Proposed Award").
- [4] The draft Proposed Award was presented as a consent position between the Employer, the State of Queensland (Department of Justice and Attorney General, Queensland Corrective Services) and Together Queensland.
- [5] On 27 November 2015, Deputy President Bloomfield referred a finalised version of the consent Proposed Award to Deputy President O'Connor for the consideration of the Full Bench. The consent Proposed Award was purported to be fully agreed between the parties.
- [6] On 27 November 2015, the Proposed Award was referred to this Full Bench for hearing and the matter was listed to be heard on 11 December 2015.
- [7] On 4 December 2015 submissions were received from State of Queensland (Department of Justice and Attorney General, Queensland Corrective Services) ("the Department") in relation to the inclusion of cl 18.1(e) in the Proposed Award.
- [8] Clause 18.1 of the Proposed Award provides:

"18.1 Overtime - general

...

- (d) A minimum payment for 3 hours' work shall apply to all overtime worked on a Saturday or a Sunday.
- (e) Except where an employee is recalled to duty in the circumstances described in clauses 18.5 and 18.6, the minimum payments provided in clause 18.1(d) shall not apply where such overtime is performed immediately preceding or following ordinary hours..."
- [9] Clause 18.5 of the Proposed Award provides:

"18.5 Recall to duty – from on call

- (a) **Monday to Friday** - an employee on call being recalled to perform duty shall be paid for the time worked at the overtime rate prescribed in clauses 18.2 or 18.3 with a minimum payment as for 2 hours' work inclusive of travelling time from home and return.
- (b) **Saturday or a Sunday** - an employee on call being recalled to perform duty on a Saturday or a Sunday is to be paid for such overtime at the appropriate overtime

rate prescribed in clauses 18.2 or 18.3 with a minimum payment as for 2 hours' work inclusive of travelling time from home and return **or**, at the employee's option, be granted time off in lieu at a mutually convenient time equivalent to the number of hours worked.

- (c) **Public holiday** - an employee on call being recalled to perform duty on a public holiday is to be paid for such overtime at the appropriate overtime rate prescribed in clause 23.1 with a minimum payment as for 4 hours' work inclusive of travelling time from home and return **or**, at the employee's option, be granted time off in lieu at a mutually convenient time equivalent to the number of hours worked. An employee who is granted equivalent time off in lieu shall also be paid at half the ordinary rate for the time so worked with a minimum payment as for 4 hours' work.
- (d)
 - (i) An employee on call who undertakes duties without the need to leave the employee's place of residence is to be paid at the appropriate overtime rate prescribed in clauses 18.2 and 18.3 for the actual time worked up to a maximum of 2 hours on any one day.
 - (ii) The employee will be responsible for recording the nature and time/s of contact in respect of the matters mentioned in clause 18.5(d)(i) for subsequent verification by the employer.
- (e) Any overtime payable in accordance with clause 18.5 shall be in addition to the on call allowances prescribed in clause 18.4(a)."

[10] Clause 18.6 of the Proposed Award provides:

"18.6 Recall to duty – other than from on call

Subject to clause 23.1(c), an employee (**other than an employee on call**) having been recalled to perform duty on any day of the week, Monday to Sunday inclusive, shall be paid for the time worked with a minimum payment as for 3 hours for each call out at the prescribed overtime rate."

[11] The Department submitted that "the qualification of clause 18.1(d) by the inclusion of clause 18.1(e) will reduce the entitlement that is available to officers pursuant to the current pre-modernisation award". The Department argued that including cl 18.1(e) would be inconsistent with the intent stated in the Ministerial Request, that "Award modernisation is not intended to reduce or remove employee entitlements and conditions from what is available in pre-modernisation awards".

[12] Together Queensland, Industrial Union of Employees ("Together") filed submissions on 10 December 2015 also opining that cl 18.1(e) should not be included in the Award.

[13] Together submitted that:

"(a) Neither the employer nor the union support the inclusion of the clause.

- (b) The inclusion of the clause represents a clear reduction in employee entitlements contrary to the intent espoused by the Ministerial request
- (c) The unilateral removal of such entitlement has the potential to result in industrial disputation."

[14] During the hearing of the matter, debate ensued in relation to whether or not the proposed clause 18.1(d) was consistent with the object of modernising awards within the meaning of s 140BA of the Act. Section 140BA relevantly provides that:

"140BA Object of modernising awards

The principal object of this part is to provide for the modernisation of awards so they—

- (a) are simple to understand and easy to apply; and
- (b) together with the Queensland Employment Standards, provide for a fair minimum safety net of enforceable conditions of employment for employees; and
- (c) are economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and
- (d) are in a form that is appropriate for a fair and productive industrial relations system; and
- (e) result in a certain, stable and sustainable modern award system for Queensland."

[15] Whilst the parties assured the Full Bench that cl 18.1(d) was not inconsistent with s 140BA of the Act, the Full Bench gave the parties liberty to apply should they wish to re-agitate the issue.

[16] At the hearing on 11 December 2015, the Full Bench heard further submissions from the parties on the inclusion of cl 18.1(e).

[17] The Full Bench accepted the argument of the parties that the inclusion of cl 18.1(e) would be inconsistent with the intent stated in the Ministerial Request, that "Award modernisation is not intended to reduce or remove employee entitlements and conditions from what is available in pre-modernisation awards." Furthermore, in coming to the decision to delete cl 18.1(e), the Full Bench has had due regard to the consent position reached between the parties.

[18] The Full Bench considered the submissions of the parties and was minded to delete 18.1(e) and amend 18.1(d) by including the words "Subject to clauses 18.5 and 18.6," immediately before the words "A minimum payment...". By making these amendments to the Draft Proposed Award, the Full Bench believes that the amended provision serves to clarify the circumstances in which a minimum payment of 3 hours' work shall apply to overtime worked by an employee on a Saturday and Sunday.

[19] The Full Bench, after considering the final draft Proposed Award with clause 18 as amended, 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 11 December 2015.

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

1. That the *Queensland Correctional Employees Award - State 2015* be made pursuant to section 140CE(1)(a) of the *Industrial Relations Act 1999* ("the Act") and operate on and from 11 December 2015, subject to the provisions of section 824 of the Act.
2. That the *Department of Community Safety - Queensland Corrective Services - Correctional Employees' Award - State 2012* be repealed on and from 11 December 2015, subject to the provisions of section 824 of the Act.