

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

CORRECTIONAL EMPLOYEES AWARD - STATE 2015

Matter No. MA/2016/10

DEPUTY PRESIDENT O'CONNOR
DEPUTY PRESIDENT KAUFMAN
INDUSTRIAL COMMISSIONER NEATE

26 August 2016

DETERMINATION

This matter coming on for hearing before the Commission at Brisbane on 26 August 2016 this Commission orders that the said Award be varied as follows as from 1 September 2016:

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

1. Title

This Award is known as the *Correctional Employees Award - State 2015*.

2. In clause 3:

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

accrued day off means a day accrued as a result of the method of working ordinary hours where employees are rostered off on various days of the week during a particular work cycle. An employee may have one or more days off during that cycle

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

Commission means the Queensland Industrial Relations Commission

- (c) By deleting the definition of "rostered day off" and inserting the following in lieu thereof:

rostered day off means:

- for an employee whose ordinary hours of duty are Monday to Friday: Saturday and Sunday
- for an employee whose ordinary hours of duty include a Saturday and/or Sunday: one of the two days each week, or four days each fortnight, that the employee is not rostered for duty in accordance with clause 15.1. Depending on the working arrangements, a Saturday and/or Sunday may also be a rostered day off

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

union means Together Queensland, Industrial Union of Employees

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

4. Coverage

This Award applies to:

- (a) employees whose salaries and rates of pay are fixed by this Award and who are:
 - (i) engaged as correctional employees by QCS; and
 - (ii) appointed pursuant to section 119 or section 148 of the *Public Service Act 2008*; and

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

5. The Queensland Employment Standards and this Award

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

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

- (b) The consultative processes established in an enterprise in accordance with clause 6.1 may provide an appropriate mechanism for consideration of matters relevant to clause 6.1(a). Union delegates at the place of work may be involved in such discussions.
- (c) Any proposed genuine agreement reached between the employer and employees in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with Chapter 6 of the Act and is to have no force or effect until approval is given.

6. By deleting clauses 6.2(d), (f) and (h) and inserting the following in lieu thereof:

- (d) In determining the outcome from facilitative provisions neither party should unreasonably withhold agreement.
- (e) ...
- (f) Where a provision refers to agreement by the majority of employees affected, all employees directly affected shall be consulted. This consultation shall be undertaken where practicable as a group, or in groups. Should the consultation process identify employees with specific concerns which relate to either equity or occupational health and safety issues, such concerns may be catered for on an individual basis subject to operational requirements.
- (g) ...
- (h) Where the agreement relates to either the working of ordinary hours on other than a Monday to Friday basis, the introduction of shift work or a change to the shift roster, the union is to be notified in writing at least one week in advance of agreement being sought.

7. By deleting the heading of clause 7.1 and inserting the following in lieu thereof:

7.1 Prevention and settlement of disputes - Award matters

8. By deleting clauses 7.1(d)(ii) and (iv) inserting the following in lieu thereof:

- (ii) if the matter is not resolved as per clause 7.1(d)(i), it shall be referred by the union representative and/or the employee/s to the appropriate management representative who shall arrange a

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conference of the relevant parties to discuss the matter. This process should not extend beyond 7 days;

- (iii) ...
- (iv) if the matter is not resolved then it may be referred by either party to the Commission.

9. By deleting clause 7.2 and inserting the following in lieu thereof:

7.2 Employee grievance procedures - other than Award matters

(a) The objectives of the procedure are to promote the prompt resolution of grievances by consultation, co-operation and discussion to reduce the level of disputation and to promote efficiency, effectiveness and equity in the workplace.

(b) The following procedure applies to all industrial matters within the meaning of the Act:

Stage 1: In the first instance the employee shall inform such employee's immediate supervisor of the existence of the grievance and they shall attempt to solve the grievance. It is recognised that an employee may exercise the right to consult such employee's union representative during the course of Stage 1

Stage 2: If the grievance remains unresolved, the employee shall refer the grievance to the next in line management ("the manager"). The manager will consult with the relevant parties. The employee may exercise the right to consult or be represented by such employee's union representative during the course of Stage 2

Stage 3: If the grievance is still unresolved, the manager will advise the employer and the aggrieved employee may submit the matter in writing to the employer if such employee wishes to pursue the matter further. If desired by either party the matter shall also be notified to the relevant union.

(c) The chief executive shall ensure that:

- (i) the aggrieved employee or such employee's union representative has the opportunity to present all aspects of the grievance; and
- (ii) the grievance shall be investigated in a thorough, fair and impartial manner.

(d) The chief executive may appoint another person to investigate the grievance. The chief executive may consult with the union in appointing an investigator. The appointed person shall be other than the employee's supervisor or manager.

(e) If the matter is notified to the union, the investigator shall consult with the union during the course of the investigation. The chief executive shall advise the employee initiating the grievance, such employee's union representative and any other employee directly concerned of the determinations made as a result of the investigation of the grievance.

(f) The procedure is to be completed in accordance with the following time frames unless the parties agree otherwise:

Stage 1: Discussions should take place between the employee and such employee's supervisor within 24 hours and the procedure shall not extend beyond 7 days.

Stage 2: Not to exceed 7 days.

Stage 3: Not to exceed 14 days.

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- (g) If the grievance is not settled the matter may be referred to the Commission by the employee or the union.
 - (h) Subject to legislation, while the grievance procedure is being followed normal work is to continue except in the case of a genuine safety issue. The *status quo* existing before the emergence of a grievance or dispute is to continue while the procedure is being followed. No party shall be prejudiced as to the final settlement by the continuation of work.
 - (i) Where the grievance involves allegations of sexual harassment an employee should commence the procedure at Stage 3.
10. By deleting clause 8.2(b) and inserting the following in lieu thereof:
- (b) For each ordinary hour worked, a part-time employee shall be paid no less than 1/76th of the minimum fortnightly rate of pay for their classification.
11. By deleting clauses 8.3(a) and (b) and inserting the following in lieu thereof:
- (a)
 - (i) A casual employee is an employee who is engaged and paid as such.
 - (ii) A casual employee cannot be employed to work more ordinary hours than are worked by an equivalent full-time employee each week or fortnight, as the case may be.
 - (b) For each hour worked a casual employee shall be paid no less than 1/76th of the minimum fortnightly rate of pay for their classification plus a casual loading of 23%.
12. By deleting clause 8.4(a) and inserting the following in lieu thereof:
- (a) Except where the employer and an employee agree to a different period or no period of probation prior to commencement of employment, the engagement of a full-time or part-time employee will in the first instance be subject to a probationary period of three months duration. If a period of probation of longer than three months is agreed, it must:
 - (i) be agreed in writing; and
 - (ii) be a reasonable period having regard to the nature and circumstances of the employment.
13. By deleting clause 8.5(b) and inserting the following in lieu thereof:
- (b) All temporary employees are to be provided with an appointment letter within two weeks of the commencement of work which is to identify: the anticipated duration of the engagement; the specified task; details of the duties to be undertaken during the course of the engagement; and, the circumstances in which the engagement can be terminated by either party.

14. By deleting clause 9.1 and inserting the following in lieu thereof:

9.1 Notice of termination by the employer

Notice of termination by the employer is provided for in Division 9 of the QES. Clauses 9.2 to 9.5 supplement the QES provisions.

15. By deleting clause 9.4 and inserting the following in lieu thereof:

9.4 Job search entitlement

Where the employer has given notice of termination to an employee for reasons other than redundancy, the employee must be allowed up to one day's time off without loss of pay for the purpose of seeking

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other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

16. By deleting clause 9.5 and inserting the following in lieu thereof:

9.5 Statement of employment

The employer shall, in the event of termination of employment, provide upon request to an employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

17. By deleting clauses 10.2(a) and (b) and inserting the following in lieu thereof:

- (a) Where the employer decides that the employer no longer wishes the job an employee/s has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee/s directly affected and, where relevant, their union.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision which will invoke the provisions of clause 10.2(a) and shall cover the reasons for the proposed terminations and measures to avoid or minimise the terminations and/or their adverse effects on the employee/s concerned.

18. By deleting clause 10.6(a) and inserting the following in lieu thereof:

- (a) Where a business is, whether before or after the date of commencement of this Award, transmitted from the employer (transmittor) to another employer (transmittee) and an employee who at the time of such transmission was an employee of the transmittor of the business becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

19. By deleting the introductory paragraph in clause 10.7 and clause 10.7(a) and inserting the following in lieu thereof:

10.7 Exemption where transmission of business

The provisions of clause 10.6 are not applicable where a business is, before or after the date of commencement of this Award, transmitted from the employer (transmittor) to another employer (transmittee) in any of the following circumstances:

- (a) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee; or

20. By deleting clause 10.8 and inserting the following in lieu thereof:

10.8 Alternative employment

The employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

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21. By deleting clause 10.9 and inserting the following in lieu thereof:

10.9 Employees exempted

Clauses 10.1 to 10.8 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to an employee engaged for a specific period or task/s; or
- (c) to a casual employee; or
- (d) to an employee with less than one year's continuous service, in which case the general obligation on the employer should be no more than to give the relevant employee an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by the employee of suitable alternative employment.

22. By deleting clause 11.2(a) and inserting the following in lieu thereof:

- (a) The employer shall consult the employees affected and, where relevant, their union, about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals) and ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).

23. By inserting a Note immediately below the heading for Part 4 as follows:

(Note: The wage rates and salary levels prescribed in this Award do not apply to employees to whom the provisions of Schedule 1 (Supported Wage System) apply.)

24. By replacing the stream titles in clause 12.1(a) which commence without a capital letter, wherever they appear in the Award, so as to commence with a capital letter, in the manner shown in the table below:

field supervisor stream	<i>replace with</i>	Field Supervisor stream
general stream	<i>replace with</i>	General stream

25. By deleting clause 12.2 and inserting the following in lieu thereof:

12.2 Minimum salary levels

- (a) **General stream**

The minimum salaries payable to employees within the General stream are prescribed in the table below:

Classification Level	Paypoint	Award Rate ¹ Per Fortnight \$ ²	Annual Salary ³ \$ ²
GS Level 1	1	1,842	48,056
	2	1,888	49,256
	3	1,936	50,508
	4	1,988	51,865
	5	2,042	53,274
	6	2,097	54,709
	7	2,152	56,144
	8	2,201	57,422
	9	2,249	58,674

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GS Level 2	1	2,296	59,900
	2	2,412	62,927
	3	2,528	65,953
	4	2,644	68,979
GS Level 3	1	2,778	72,475
	2	2,863	74,693
	3	2,949	76,936
	4	3,034	79,154
GS Level 4	1	3,232	84,320
	2	3,315	86,485
	3	3,399	88,677
	4	3,482	90,842
GS Level 5	1	3,642	95,016
	2	3,730	97,312
	3	3,818	99,608
	4	3,907	101,930
GS Level 6	1	4,037	105,321
	2	4,113	107,304
	3	4,192	109,365
	4	4,269	111,374

Notes:

- ¹ Includes the arbitrated wage adjustment payable under the 1 September 2016 Declaration of General Ruling.
- ² Rounded to the nearest dollar.
- ³ Annual salaries (fortnightly rate x 26.089) are for reference purposes only.

(b) **Field Supervisor stream**

The minimum salaries payable to employees within the Field Supervisor stream are prescribed in the table below:

Classification Level	Award Rate¹ Per Fortnight \$²	Annual Salary³ \$²
FS Level 1	2,296	59,900
FS Level 2	2,412	62,927
FS Level 3	2,528	65,953
FS Level 4	2,644	68,979
FS Level 5	2,778	72,475

Notes:

- ¹ Includes the arbitrated wage adjustment payable under the 1 September 2016 Declaration of General Ruling.
- ² Rounded to the nearest dollar.
- ³ Annual salaries (fortnightly rate x 26.089) are for reference purposes only.

(c) **Payment of salaries**

Salaries shall be paid fortnightly and may at the discretion of the employer be paid by electronic funds transfer.

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26. By inserting clause 12.5(a)(iii):
- (iii) For an employee **other than** a trade instructor or farm officer who does not possess a relevant AQF-7 qualification - satisfactory completion of an equivalent qualification or by having experience acceptable to the employer.
27. By deleting clause 12.5(b)(ii) and inserting the following in lieu thereof:
- (ii) completion of a minimum period of 12 months' service at the maximum paypoint of level GS2; and
28. By deleting clause 12.6(a)(iii) and inserting the following in lieu thereof:
- (iii) In the case of a casual employee with 12 months' **continuous service** with the same employer:
 - (A) the employee has received a salary at a particular classification and paypoint for a period of at least 12 months; and
 - (B) the employee has worked 1,200 ordinary hours in such classification.
- For the purpose of clause 12.6(a)(iii), **continuous service** for a casual employee is considered to be broken if more than three months, excluding any public holidays, has elapsed between the end of one employment contract and the start of the next employment contract.
29. By deleting clause 12.7(a) and inserting the following in lieu thereof:
- (a) **Employees in the Field Supervisor stream**
An employee in the Field Supervisor stream:
 - (i) shall be appointed to classification level FS1 at the time of their initial appointment to a position in the Field Supervisor stream.
 - (ii) must possess a Certificate IV in Correctional Practice in order to progress to classification level FS2.
 - (iii) must possess a Diploma in Correctional Administration in order to progress to classification level FS5.
30. By deleting clause 12.7(b)(iii) and inserting the following in lieu thereof:
- (iii) A trade instructor or a farm officer must possess:
 - (A) a Certificate III in Correctional Practice in order to move beyond classification level GS1, paypoint 3.
 - (B) a trade qualification or farming qualification to Certificate III level or relevant experience to an AQF-4 level trade or farming qualification, as assessed by an accredited external assessor, in order to move beyond classification level GS1, paypoint 5.
 - (C) a relevant AQF-5 (post trade) qualification in order to move beyond classification level GS2, paypoint 1. The relevant AQF-5 (post trade) qualification need not be trade specific.

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31. By deleting the table in clause 12.8 and inserting the following in lieu thereof:

<u>Position employee is engaged in</u>	<u>Minimum period</u>
(i) shift worker rostered to work 12 hour shifts	two consecutive 12 hour shifts
(ii) any other position	three consecutive working days

32. By deleting clause 13.1 and inserting the following in lieu thereof:

13.1 Dog handlers allowance

- (a) A full-time employee in the General stream engaged to perform the duties of a dog handler, where a QCS dog is kennelled at the home of an employee and the employee is responsible for the care and maintenance of the dog during hours rostered off duty, shall be paid an additional allowance of \$306.20 per fortnight.
- (b) The dog handlers allowance shall be paid during all periods of leave.
- (c) All food, equipment and associated costs needed to properly care for and maintain the dog shall be paid for by the employer.

33. By deleting clause 13.2 and re - numbering clause 13.3 as clause 13.2.

34. By deleting clause 13.4 and inserting the following in lieu thereof:

13.3 Motor vehicle allowance

- (a) Where the employer requires an employee to use their own vehicle in or in connection with the performance of their duties, for travel away from their usual place of work, the employee shall be paid an allowance for each kilometre of authorised travel as follows:
 - (i) motor vehicle - \$0.77 per kilometre; and
 - (ii) motorcycle - \$0.26 per kilometre.
- (b) The employer may require an employee to record full details of all such official travel requirements in a log book.

35. By deleting clause 13.5 and inserting a new clause 13.4 as follows:

13.4 Work camp allowances

(a) **Incidental allowance**

An employee in the Field Supervisor stream shall be paid an incidental allowance at the rate of \$61.22 per fortnight for all time worked at a work camp.

(b) **Special circumstances allowance**

An employee in the Field Supervisor stream shall be paid, in addition to their ordinary salary, a special circumstances allowance of 16% for all time worked in recognition of the peculiar work arrangements associated with work camp operations and the duties of employees in the Field Supervisor stream including, but not limited to, the requirement to:

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- (i) account for all prisoners assigned to a particular work camp from the time of the prisoners' departure from a correctional centre until their return to the correctional centre at the end of the normal working period for that work camp;
 - (ii) take responsibility for all operations undertaken at the work camp to which they are assigned; and
 - (iii) respond to emergencies and perform routine security procedures and administrative tasks outside of the nominal daily hours of duty.
- (c) An employee in receipt of the Incidental allowance prescribed at clause 13.4(a) or the Special circumstances allowance prescribed at clause 13.4(b) shall be paid such allowances during periods of annual leave, sick leave, public holidays and long service leave.

36. By deleting clause 13.6 and inserting the following in lieu thereof:

13.5 Adjustment of monetary allowances

- (a) The monetary allowances specified in clauses 13.1 (dog handlers allowance) and 13.4(a) (incidental allowance) shall be automatically adjusted from the same date and in the same manner as monetary allowances are adjusted in any State Wage Case decision or other decision of the Commission adjusting minimum wage rates in this Award.
- (b) At the time of any adjustment to the wage rates in this Award the expense related allowance at clause 13.3 (motor vehicle allowance) shall be automatically adjusted by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (c) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index, as follows:

<u>Allowance</u>	<u>Eight Capitals Consumer Price Index</u> <u>(ABS Cat No. 6401.0 - Table 7)</u>
Motor vehicle allowance <i>(last adjusted 1 September 2014)</i>	Private motoring sub-group

37. By deleting clause 14 and inserting the following in lieu thereof:

14. Superannuation

- (a) Subject to Commonwealth legislation and clause 14(b), the employer must comply with superannuation arrangements prescribed in the *Superannuation (State Public Sector) Act 1990* (and associated Deed, Notice and Regulation).
- (b) Where Commonwealth legislation provides for choice of fund rights to an employee subject to this Award, and that employee fails to elect which superannuation fund to which employer contributions are directed, the employer will direct contributions to the appropriate fund prescribed in the abovementioned Queensland legislation.

38. By deleting the word "work" where it appears in the heading of clause 15.1 and inserting the word "duty".

39. By deleting clause 15.2(a) and inserting the following in lieu thereof:

- (a) The spread of ordinary hours of duty for day workers shall be between 0600 and 1800 on each day, Monday to Sunday.

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40. By deleting clause 15.3(b) and inserting the following in lieu thereof:
- (b) Broken duty will only be worked following mutual agreement between the employer and affected employee/s and consultation with the union.
41. By deleting clause 15.3(c)(iv) and inserting the following in lieu thereof:
- (iv) If the parties cannot agree in relation to any proposal to introduce new/flexible shift arrangements either party may, after following the dispute resolution procedure prescribed at clause 7.1, refer the matter to the Commission for arbitration.

42. By deleting clause 15.6 and inserting the following in lieu thereof:

15.6 Payment for working ordinary hours - shift workers

- (a) Subject to clause 15.6(b) all employees who work an afternoon shift or night shift are to be paid, in addition to their ordinary salary, an allowance of 15% for all ordinary time worked on such shifts. This allowance shall not apply to work performed between 0000 on a Saturday and 2400 on a Sunday.
 - (b) All ordinary hours of duty worked by a shift worker on a weekend or a public holiday will be paid for as follows:
 - (i) between 0000 and 2400 on a Saturday - time and one-half;
 - (ii) between 0000 and 2400 on a Sunday - double time; and
 - (iii) between 0000 and 2400 on a public holiday - at the rate prescribed in clause 23.1.
 - (c) Aggregated shift work payment
 - (i) The parties to this Award may agree to a system of remuneration that involves an aggregation of specified entitlements payable under this Award for the working of shift work.
 - (ii) Any aggregated shift allowance payments for Field Supervisors shall be paid during periods of annual leave, sick leave, public holidays and long service leave.
43. By deleting clauses 16.1(a) and inserting the following in lieu thereof:
- (a) All day workers who work in excess of 6 hours on any day shall be allowed not less than 30 minutes for an unpaid meal break between the third and sixth hours of duty.

44. By deleting clause 16.2 and inserting the following in lieu thereof:

16.2 Meal breaks - shift workers

- (a) Subject to the qualifications contained elsewhere in clause 16.2, all shift workers shall be allowed a 30 minute meal break at an operationally convenient time, to be completed between the third and sixth hours of duty.
- (b) Where a shift is of 6 hours duration or less a meal break will not be provided.
- (c) Where a shift exceeds 10 hours duration an additional meal break shall be allowed at an operationally convenient time.

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- (d) The hours of duty of shift workers will be inclusive of meal breaks. Meal breaks will be taken so as not to interfere with operational requirements.
- (e)
 - (i) Where a shift is of 10 hours duration or less, an employee shall be allowed, where practicable, to take a meal break away from their work station.
 - (ii) Where a shift exceeds 10 hours duration, an employee shall be allowed to take at least one meal break away from their work station.
 - (iii) Where an employee, other than a custodial correctional officer, takes a meal break away from their work station the 30 minute meal break shall include walking time.
 - (iv) Custodial correctional officers shall be entitled to an uninterrupted meal break of not less than 30 minutes.

45. By deleting the heading of clause 16.3 and inserting the following in lieu thereof:

16.3 Provision of meals - shift workers

46. By deleting the heading of clause 17 and inserting the following in lieu thereof:

17. Rest pauses - both day workers and shift workers

47. By deleting clause 18.3(a)(i) and inserting the following in lieu thereof:

- (a) Field Supervisor stream
 - (i) Subject to clause 18.3(a)(ii), where an employee in the Field Supervisor stream is rostered (on average) for eight days ordinary duty in each working fortnight (that is 24 days in each six week working period), in circumstances where such employees are required to work a calendar day additional to those prescribed by their roster, those officers shall be paid one day's pay at double-time rates and *pro rata* amounts when more or less than one full day's work is performed.

48. By deleting clause 18.4 and inserting the following in lieu thereof:

18.4 On call - additional payments

- (a) Where an employee is instructed to be available on call outside ordinary or rostered working hours the employee shall be paid, in addition to their ordinary rate of pay, an allowance based upon the hourly rate of classification level GS1, paypoint 7, in accordance with the following scale:
 - (i) where an employee is on call throughout the whole of a rostered day off or a public holiday: 95% of the prescribed hourly rate;
 - (ii) where an employee is on call during the night only of a rostered day off, an accrued day off or public holiday: 60% of the prescribed hourly rate; and
 - (iii) where an employee is on call on any other night: 47.5% of the prescribed hourly rate.
- (b) For the purpose of calculating the hourly rate, the divisor shall be based upon a 38 hour week and calculated to the nearest 5 cents.
- (c) For the purpose of clause 18.4 a **night** is deemed to consist of those hours falling between 1700 and 0800 or mainly between such hours.

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- (d) Any on call roster will be implemented by the employer after consultation between the employer and the affected employees.
- (e) Where practicable the employer shall not require an employee to be continuously available on call for a period in excess of six weeks.

49. By deleting clause 18.5(d) and inserting the following in lieu thereof:

- (d) (i) An employee on call who undertakes duties without the need to leave the employee's place of residence shall 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 the recording of the nature and the times of contact in respect of the matters mentioned in clause 18.5(d)(i) for subsequent verification by the employer.

50. By deleting clause 19.1 and inserting the following in lieu thereof:

19.1 Entitlement to annual leave

Employees in:

- (a) the Field Supervisor stream; and
- (b) the General stream who are in receipt of an aggregated shift penalty which has been determined based on a shift pattern which includes provision for 12 hour shifts and the working of shifts, both day and night, on all seven days of the week,

shall be entitled to 190 hours of annual leave for each completed year of employment with the employer.

51. By deleting clause 20(e) inserting the following in lieu thereof:

- (e) Personal leave shall be debited from an employee's personal leave balance as follows:
 - (i) An employee in the Field Supervisor stream - on the basis of 7.6 hours for each calendar day's absence from duty and on a *pro rata* basis for every part of a day.
 - (ii) An employee in the General stream - on a time for time basis, in accordance with the employee's roster.

52. By amending the Note at clause 20 as follows:

Note: Where a directive about sick leave or bereavement leave covers an employee, the provisions of the relevant directive apply to the employee to the extent it provides a more generous entitlement.

53. By deleting clause 21 and inserting the following in lieu thereof:

21. Parental leave

- (a) Parental leave is provided for in Division 5 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.

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- (b) Notwithstanding the provisions of Subdivision 2 of Division 5 of the QES, all full-time and part-time employees are entitled to parental leave upon commencement of employment.
- (c) (i) An employee who is pregnant, whether or not she has given her employer written notice of the date/s on which she proposes to start and/or end maternity leave, must:
 - (A) commence maternity leave at least 6 weeks prior to the expected date of birth of her child; and
 - (B) remain on maternity leave until at least 6 weeks after the birth of the child.
- (ii) An employer may at the request of the employee and on receipt of a certificate from a medical practitioner certifying that in the opinion of the medical practitioner:
 - (A) the employee is fit for duty until a specified date - reduce the period mentioned in clause 21(c)(i)(A); or
 - (B) the employee is fit to resume duty - reduce the period mentioned in clause 21(c)(i)(B).
- (iii) If the employer makes a decision under clause 21(c)(ii)(A) to reduce the period, the approval is of effect until:
 - (A) the day specified in the medical certificate; or
 - (B) the day 14 days after the day the employer revokes the decision by giving written notice to the employee; or
 - (C) the employee commences maternity leave; or
 - (D) the day of the employee's confinement,whichever happens first.
- (d) An employee who is pregnant, during the term of her pregnancy until 6 weeks before the expected date of birth of her child or lesser period as approved by the employer, may request to work part-time or other flexible work arrangements.
- (e) An employee who has taken leave to attend compulsory interviews or examinations as part of an adoption process or who has taken leave to attend compulsory interviews or court hearings associated with a surrogacy arrangement may request that such leave be taken as paid annual leave.
- (f) In addition to the provisions of Subdivision 6 of Division 5 of the QES an employee who has returned to work on a part-time basis may seek to return to the position they held prior to commencing parental leave.
- (g) If the position mentioned in clause 21(f) no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position that is, as nearly as possible, comparable in status and remuneration to that of the employee's former position.
- (h) The employer must make a position to which the employee is entitled available to the employee.
- (i) (i) An employee who is the parent of a child may apply, at any time, to their employer to work on a part-time basis in order to be the child's primary caregiver when not at work.

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- (ii) The requirements concerning the manner in which the employee may make an application to work part-time under clause 21(i)(i) are the same as those contained in the QES with respect to applications to return to work on a part-time basis for an employee on parental leave (i.e. s 71 GT).
- (iii) The period in relation to which an application under clause 21(i) may be made cannot extend beyond the day the child is required to be enrolled for compulsory schooling under the *Education (General Provisions) Act 2006*.
- (iv) The requirements concerning the manner by which the employer is to assess any application by an employee to work part-time are the same as those contained in the QES with respect to assessing applications to return to work on a part-time basis for an employee on parental leave (i.e. s 71GU).

Note: Where a directive about paid parental leave covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

54. By deleting clause 22(b) and inserting the following in lieu thereof:

- (b) In lieu of the provisions of section 71HB(2)(a) and (b) of the Act, all employees who complete 10 years' continuous service are entitled to long service leave at the rate of 1.3 weeks on full pay for each year of continuous service and a proportionate amount for an incomplete year of service.

55. By deleting clause 23.1 and inserting the following in lieu thereof:

23.1 Payment for public holidays and for work on a public holiday

- (a) An employee (other than a casual employee) who would normally work on a day on which a public holiday falls and who:
 - (i) is not required to work on that day, shall be paid for the ordinary hours the employee would normally have worked if that day had not been a public holiday;
 - (ii) is required to work on the public holiday shall, in addition to the payment prescribed in clause 23.1(a)(i), be paid at the rate of time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.
- (b) An employee (including a casual employee) who would normally work on a day on which a public holiday falls and who performs authorised overtime outside the employee's ordinary working hours for that day shall be paid for such time at double the overtime rate prescribed in clauses 18.2 or 18.3, as the case may be.
- (c) An employee (including a casual employee) who would not normally be required to work on a public holiday but who is required to work on that day shall be paid at the rate of double time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.
- (d) The minimum payment provided in clauses 23.1(a) or (c) shall not apply where the work performed on the public holiday is immediately preceding or following ordinary hours.

56. By deleting clause 23.3(a) and inserting the following in lieu thereof:

- (a) Subject to statutory limitations (such as the time work may not be performed on Anzac Day) where there is agreement between the employer and an employee or employees, another ordinary working day may be substituted for a public holiday.

Determination

57. By deleting clauses 23.4(a) and inserting the following in lieu thereof:
- (a) An employee (other than a casual employee) who does not ordinarily work Monday to Friday of each week is entitled to public holidays as follows:
 - (i) A full-time employee is entitled to either payment for each public holiday or a substituted day's leave.
 - (ii) Where a public holiday would have fallen on a Saturday or a Sunday (e.g. Australia Day) but is substituted for another day, an employee (other than a casual employee) who would ordinarily have worked on such Saturday or Sunday but who is not rostered to work on such day is entitled to payment for the public holiday or a substituted day's leave.
58. By deleting clause 23.5(c) and inserting the following in lieu thereof:
- (c) All hours worked by a shift worker on a public holiday shall be paid for at the rate prescribed in clause 23.1.
59. By deleting clauses 29(d) and (e) and inserting the following in lieu thereof:
- (d) Upon request and subject to approval by the chief executive, employees may be granted paid time off in special circumstances to attend management committee meetings, union conferences, and Australian Council of Trade Unions (ACTU) Congress.
 - (e) The granting of industrial relations education leave or any additional special leave should not impact adversely on service delivery, work requirements or the effectiveness and efficiency of the work unit concerned. At the same time, such leave shall not be unreasonably refused.
60. By deleting clauses 30(b)(i) and inserting the following in lieu thereof:
- (b) Entry procedure
 - (i) An authorised industrial officer may enter a workplace at which the employer carries on a calling of the officer's organisation, during the employer's business hours, to exercise a power under section 373 of the Act as long as the authorised industrial officer:
 - (A) has notified the employer or the employer's representative of the officer's presence; and
 - (B) produces their authorisation, if required by the employer or the employer's representative.

61. By deleting Schedule 1 - Supported Wage System and inserting the following in lieu thereof:

Schedule 1 - Supported Wage System

This Schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the supported wage system.

Definitions - In this Schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

Determination

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991 (Cth)*, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this Award for the class of work for which an employee is engaged

supported wage system (sws) means the Commonwealth Government system to promote employment for people who cannot work at full Award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

sws wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

Eligibility criteria

- (a) Employees covered by this Schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Award, because of the effects of a disability on their productive capacity, and who meet the impairment criteria for receipt of a disability support pension.
- (b) This Schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of the *Workers' Compensation and Rehabilitation Act 2003*.

Supported wage rates

- (a) Employees to whom this Schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following Table and Note:

Assessed capacity (see below)	Relevant minimum wage*
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

*Note: The minimum amount payable to an employee receiving a supported wage must not be less than \$82 per week.

- (b) Where an employee's assessed capacity is 10%, the employee must receive a high degree of assistance and support.

Assessment of capacity

- (a) For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the sws by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

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- (b) All assessments made under this Schedule must be documented in a sws wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the sws.

Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this Schedule will be entitled to the same terms and conditions of employment as other workers covered by this Award on a *pro rata* basis.

Workplace adjustment

If the employer wishes to employ a person under the provisions of this Schedule it must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation.

Trial period

- (a) In order for an adequate assessment of the employee's capacity to be made, the employer may employ a person under the provisions of this Schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- (c) The minimum amount payable to the employee during the trial period must be no less than the amount recorded in the Note under the Table (above).
- (d) Work trials should include induction or training as appropriate to the job being trialled.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment (see **Assessment of capacity** - above).

Dated: 26 August 2016

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

Operative Date: 1 September 2016
Determination - Correction of error

Released: 26 August 2016