

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Award Modernisation - Proposed Queensland Public Service and Other Employees Award [2014] QIRC 122*

PARTIES: **Public Service Commission**
Together Queensland, Industrial Union of Employees
Queensland Nurses' Union of Employees

CASE NO: MA/2014/106
MA/2014/107
MA/2014/108

PROCEEDING: Objections to the view of Award Modernisation Team in the Public Service awards

DELIVERED ON: 1 August 2014

HEARING DATES: 24 July 2014
25 July 2014

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

ORDERS: **Objections allowed in part and consequential orders made**

CATCHWORDS: INDUSTRIAL LAW - Industrial awards - preparation of modern awards - proposed *Queensland Public Service Officers and Other Employees Award - State 2014* - objections to the inclusion of certain clauses in proposed award - objections to omission of certain clauses from proposed award - whether certain clauses should be included or excluded from award.

CASES: *Industrial Relations Act 1999* s 71MB, s 71LB, s 71OB, s 71OJ, s 71 MA, s 71NB, s 140BB, s 229(1)(b)
Industrial Regulation 2011 Schedule 1AA Part 2
Acts Interpretation Act 1954, s 14(3)
Minister for Immigration and Multicultural and Indigenous Affairs v Nystrom (2006) 228 CLR 566

APPEARANCES: Mr C. Murdoch, of Counsel, for the Public Service Commission

Mr R. Rule, for Together Queensland
Mr M. Doherty, for the Queensland Nurses Union

Reasons for Decision

Introduction

- [1] In accordance with the Modern Award provisions of the *Industrial Relations Act 1999* ("the Act") and the written request of the Attorney-General and Minister for Justice, the Award Modernisation Team of the Queensland Industrial Relations Commission has prepared a proposed *Queensland Public Service Officers and Other Employees Award - State 2014* ("QPSOOE Award"). That document is referred to in these reasons as the "Proposed Award."
- [2] The Proposed Award was prepared in consultation with the Public Service Commission ("PSC") and unions representing employees who would be subject to the Proposed Award.
- [3] The PSC, the Together Queensland Industrial Union of Employees ("Together Queensland") and the Queensland Nurses Union of Employees each lodged with the Commission objections in relation to specific aspects of the Proposed Award.
- [4] The objections can be characterised broadly as either:
 - objections to the inclusion of certain clauses within the Proposed Award; or
 - objections to the omission of a clause or clauses, some of which are found in the *Queensland Public Service Award - State 2012*, ("the 2012 PS Award") which the objector contends should be included in the QPSOOE Award.
- [5] The Vice President of the Commission referred all the objections to this Full Bench. Written submissions and draft clauses were provided before the hearing on 24 July 2014. As a result of another conference of the parties with the Award Modernisation Team (before the hearing), some of the objections were withdrawn.
- [6] Having heard from the representatives of the parties and considered their written submissions, we delivered orally our decisions in relation to the nine objections that were current as at 24 July 2014, together with brief reasons for those decisions. We now publish those decisions in writing.

Enterprise Flexibility

- [7] Together Queensland objects to the removal of the 2012 PS Award Clause 2.1, "Enterprise Flexibility."
- [8] Together Queensland seeks the retention of the following clauses:

"2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at an enterprise to provide more flexible working arrangements, improvement in the quality of working

life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.

2.1.2 The consultative process established in an enterprise in accordance with clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1. Union delegates at the place of work may be involved in such discussions."

- [9] Together Queensland submits that the Enterprise flexibility provisions in the 2012 PS Award is permitted content, and does not offend s 71MB.
- [10] The PSC submits that it is inappropriate to include an enterprise flexibility provision. It is submitted that the proposed clause in the Proposed Award regarding Individual Flexibility Arrangements is required content under s 71MB and, accordingly, "covers the field."
- [11] In support of that submission, the PSC directed the Full Bench to the decision of the High Court of Australia in *Minister for Immigration and Multicultural and Indigenous Affairs v Nystrom*.¹
- [12] The inclusion of the sub-clauses is, in the submission of the PSC, directly inconsistent with the obligation at s 71MB of the Act. Section 71MB prescribes that a modern industrial instrument must include the provision prescribed under a regulation for enabling an employee and employer to agree to a flexibility arrangement to meet the genuine needs of the employee and employer.
- [13] Paragraph 29(c) of the Attorney-General's request requires that each modern award must include a flexibility term that satisfies the requirements of s 71MB of the Act.
- [14] The Commission declines to insert clauses 2.1.1 and 2.1.2 as they offend s 71MB of the Act. We accept the PSC's submission that s 71MB covers the field. It does not permit the inclusion of provisions beyond the provision prescribed under the regulation. In any event, the clauses are largely aspirational in nature.

Facilitative Award

- [15] Together Queensland seeks the inclusion of clause 2.2 of the 2012 PS Award, which states:

"2.2 Procedures to implement facilitative Award provisions

Wherever facilitative provisions appear in this Award which allow for determination of the conditions of employment by agreement between the Chief Executive and the Union or the Chief Executive and the majority of Employees affected, the following procedures shall apply:

- (a) Facilitative Award provisions can be negotiated between management and Employees who are

¹ *Minister for Immigration and Multicultural and Indigenous Affairs v Nystrom* (2006) 228 CLR 566, 583 to 589.

directly affected by such proposals or between management and the Union depending upon the particular Award provisions.

- (b) Employees may be represented by their local Union delegate/s and shall have the right to be represented by their local Union official/s.
- (c) Facilitative Award provisions can only be implemented by agreement.
- (d) In determining the outcome from facilitative provisions, neither party should unreasonably withhold agreement.
- (e) Agreement is defined as obtaining consent of greater than 50% of Employees directly affected or of the Union depending upon the particular Award provisions.
- (f) Where a provision refers to agreement by the majority of Employees affected, all Employees directly affected shall be consulted as a group. Should the consultation process identify Employees in 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) Any agreement reached must be documented, and shall incorporate a review period.
- (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 change to the shift roster the relevant Union/s are to be notified in writing at least one week in advance of agreement being sought."

[16] Together Queensland further submits that such a clause is a means via which agreement in respect of provisions in the QPSOOE Award that require agreement may occur and is not a non-allowable matter.

[17] The PSC opposes the inclusion of clause 2.2 and submits that the clause is a "non-allowable" matter. The two grounds upon which the PSC objects are:

- sub-clauses (a), (e) and (h) offend s 71OC(a); and
- sub-clause (h) offends s 71OJ(b).

[18] The Commission after further hearing from the parties has concluded that the following amended clause 2.2, which has removed those provisions that offend the

above sub-clauses, should be inserted into the QPSOOE Award:

"2.2 Procedures to implement facilitative Award provisions

Wherever facilitative provisions appear in this Award which allow for determination of the conditions of employment by agreement between the Chief Executive and the majority of Employees affected, the following procedures shall apply:

- (a) Facilitative Award provisions can be negotiated between management and Employees who are directly affected by such proposals.
- (b) Employees may be represented by their local Union delegate/s and shall have the right to be represented by their local Union official/s.
- (c) In determining the outcome from facilitative provisions, neither party should unreasonably withhold agreement.
- (d) Agreement is defined as obtaining consent of greater than 50% of Employees directly affected.
- (e) Any agreement reached must be documented, and shall incorporate a review period."

Proposed Individual dispute resolution procedure clause

[19] The Proposed Award includes Clause 8 which is titled "Dispute Resolution." It contains nine sub-clauses, the first eight of which are not in dispute.

[20] Subclause 8.9 is separately titled "Individual dispute resolution procedure." It is based on a provision in the 2012 PS Award.

[21] The objective of this dispute resolution procedure, as set out in subclause 8.9(b), is:

"... to avoid disputes by the resolution of issues through measures based on consultation, co-operation and discussion and to avoid interruption to the performance of work and consequential loss of production and salaries."

[22] The PSC seeks the removal of subclause 8.9 on the basis that it is unnecessary because:

- first, the subject matter is already provided for in the dispute resolution clause prescribed in accordance with s 71MA of the Act and contained in Schedule 1AA Part 2 of the *Industrial Regulation 2011*; and
- second, the matter is otherwise adequately addressed by the Act, including in s 229(1)(b).

[23] Section 71MA of the Act states:

"A modern industrial instrument must include the provision prescribed under a regulation for preventing and settling disputes about a matter arising under the instrument or the Queensland Employment Standards."

[24] The relevant prescribed provision is found in subclauses 8.1 to 8.8 of the Proposed Award.

[25] The PSC submits that those subclauses cover the field, and that the effect of the relevant regulation, and s 71MA of the Act is that subclause 8.9 cannot be included because it is neither required nor permitted. The PSC refers to judicial authority to the effect that where there is express mention of certain things (for example, as in s 71MA), then anything not mentioned in that section is excluded. In other words, where a statute confers only one power to take the relevant action, that section necessarily confines the generality of another apparently applicable power by reference to the restrictions in the former power.² The PSC relies on those cases to support its submission that subclause 8.9 should be deleted.

[26] In reply, Together Queensland submits that subclauses 8.1 to 8.8 do not cover the field. It relies on the words used in subclause 8.9(a) and on s 71NB of the Act. That section states:

"A modern industrial instrument may include provisions, other than non-allowable provisions, that are—

- (a) incidental to a provision that is required or permitted to be included in the instrument; and
- (b) essential for making a particular provision operate in a practical way."

[27] Both unions submit that there is a practical need for such a clause. In the absence of subclause 8.9, they submit, there would be no procedure for potentially addressing grievances and resolving a range of industrial disputes informally in the workplace. Matters would either not be resolved or would be brought to the Commission under s 229, potentially clogging the system. We agree.

[28] In our view, subclause 8.9 should be retained. We have reached that conclusion for three reasons:

- First, subclause 8.9 is drafted in terms that refer to matters not covered by s 71MA. The opening words of subclause 8.9(a) are:

"The matters to be dealt with under this procedure include all grievances or disputes between an employee and an employer in respect to any industrial matter *other than* a dispute regarding a matter arising under this award *or* the QES, which are to be dealt with in accordance with clauses 8.1 to 8.8." (emphasis added)

² See *Minster for Immigration and Multicultural and Indigenous Affairs v Nystrom* (2006) 228 CLR 566, 583-589.

Given that s 71MA of the Act applies in relation to subclauses 8.1 to 8.8, but does not expressly prevent the inclusion of other dispute resolution clauses, we consider that sub-clause 8.9 is not excluded by the operation of s 71MA.

- Second, subclause 8.9 satisfies the requirements of s 71NB of the Act because the subclause is both incidental to a provision that is required to be included in the Proposed Award (namely the Dispute Resolution clause) and essential for making that particular provision operate in a practical way. In that context, the scheme in s 229 and following sections of the Act does not provide a complete alternative to subclauses 8.1 to 8.8, but is a scheme to which parties may have resort after other dispute resolution processes have been followed. Clause 8.9 provides the process for the genuine attempts at settlement, referred to in s 229(1)(b), to occur; and
- Third, there is nothing in the part of the Act dealing with the content of modern industrial instruments which can be relied on to characterise subclause 8.9 as a non-allowable provision.

[29] Accordingly, we conclude that subclause 8.9 should be retained in the terms appearing in the Proposed Agreement.

Union Delegates' Rights Clause

[30] Together Queensland objects to the removal of the PS Award clauses 11.3.1 and 11.3.2 under the heading "Union Delegates."

[31] It is urged on the Commission that the following two clauses should be included in the new award with the necessary amendments to remove reference to union officials. The clauses which are sought to be incorporated are as follows:

"11.3.1 The parties acknowledge the constructive role democratically elected Union delegates undertake in the workplace in relation to Union activities that support and assist members. That role will be formally recognised, accepted and supported.

11.3.2 Public sector employees will be given full access to Union delegates/officials during working hours to discuss any employment matter or seek Union advice, provided that service delivery is not disrupted and work requirements are not unduly affected."

[32] The argument mounted by Together Queensland went largely to merit.

[33] The PSC submits that clauses 11.3.1 and 11.3.2 cannot be included as they are "non-allowable" pursuant to s 71OB (Encouragement provision) of the Act. Section 71OB(1) provides that a modern industrial instrument must not contain a provision that directly or indirectly requires a person to encourage another person to join or maintain membership of an industrial association, or requires a person to supply the employer's facilities resources or premises to an officer, employee or other representative of an industrial association; or allows employees, during working hours, to attend meetings of members of, or organised by, an industrial association.

- [34] The Commission accepts the submission of the PSC that the provisions of s 71OB cannot be read down by reference to s 140BB(2).
- [35] The Commission's attention was directed to example 1³ in s 71OB. Pursuant to s 14(3) of the *Acts Interpretation Act 1954* (Qld), an example in an Act forms part of the Act. The example confirms our opinion that the clauses sought by Together Queensland to be included, namely 11.3.1 and 11.3.2, are non-allowable under s 71OB of the Act. In our view the clauses indirectly contravene the parts of the section to which we have referred. In particular to require the PSC to formally recognise, accept and support union activities undertaken by union delegates indirectly encourages people to join the union.

Spread of Hours for Casuals and Part Time Employees not in a Flexible Hours Arrangement Clauses

- [36] Together Queensland objects to the removal of the following:
- the 0900 to 1700 spread of hours for Part Time employees not in a flexible hours arrangement provided for by the 2012 PS Award at clause 4.3.2(d)
 - the 0900 to 1700 spread of hours for casual employees provided by the 2012 PS Award at clause 4.4.7.
- [37] It was argued by the PSC that it is non-allowable for a Modern Award to have a different spread of hours for casual or part-time employees (0900 to 1700) and for full-time employees (0600 to 1800).
- [38] Section 71OJ(a) of the Act provides that a Modern Award must not include a provision that "restricts the type of engagements that are available." Section 71OJ(b) also provides that a Modern Award must not include a provision that "restricts flexible rostering arrangements."
- [39] The Commission has concluded that a provision which curtails the spread of hours is contrary to s 71OJ9(b) and should therefore not be included in the QPSOOE Award.

RTA Award – Performance of Higher Duties

- [40] Together Queensland objects to the removal of the discretion of the Residential Tenancy Authority ("RTA") to pay Higher Duties for periods of one day as provided for by the current Residential Tenancies Authority Employee's Award ("RTA Award") at clause 5.7 "Performance of higher duties," which states:

5.7 Performance of higher duties

The Authority may, after considering all relevant factors, approve the payment of the higher duties to an employee who is directed

³ Clause 11.3 *District Health Services Employees Award – State 2012*

to perform temporarily all of the duties of a position at a higher Classification Level, if the duties are performed for a period of not less than one working day."

[41] Together Queensland submits that the loss of that clause would be a clear loss of entitlement for those employees.

[42] The Proposed Award contains the following provision:

"12.10 Performance of higher duties

(a) An employee directed to temporarily fill a position for more than 3 consecutive working days at a higher classification level within the same stream shall be paid extra remuneration at the first paypoint of the classification level of the position being temporarily filled."

[43] Accordingly, all employees covered by the QPSOOE Award who fill such a position for 3 consecutive working days, would be paid the higher remuneration.

[44] The Commission accepts the submissions of the PSC. The provision under the RTA Award is discretionary; no actual right will be removed. No evidence has been put before the Commission to show if any employees have benefited or otherwise from the current provision. In the circumstances, we do not consider it to be desirable to carve out or make specific provisions for a discrete group of employees.

[45] The Commission declines to insert clause 5.7 of the RTA Award.

Cultural Centres Award

[46] Together Queensland objects to the removal of coverage of Public Service Officers currently employed by departments, agencies and bodies proposed to be covered by a new "Cultural Centres Award."

[47] The PSC seeks the deletion of the current clause 4.2 of the Proposed Award and the insertion in lieu of the following:

"4.2 This award shall not apply to employees appointed pursuant to section 119 or section 148 of the *Public Service Act 2008* employed by or on behalf of those entities listed in Schedule 5 to this award."

and the insertion of:

"Schedule 5 – List of "Cultural Centres":

Queensland Art Gallery (including the Gallery of Modern Art)

Queensland Museum

State Library of Queensland

The following business units of the Arts Queensland Division of the Department of Science, Information Technology, Innovation and the Arts (DSITIA) -

Judith Wright Centre of Contemporary Arts

The Centre of Contemporary Arts Cairns"

[48] Currently, employees from these various entities are engaged under the following awards:

- *Queensland Public Service Award – State 2012*
- *Employees of Queensland Government Departments (Other than Public Servants) Award – State 2012*
- *Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South-Eastern Division 2012*

[49] It is argued by the PSC that the proposed Cultural Centres Award would reduce the number of awards operating across the Queensland Art Gallery and Gallery of Modern Art, the State Library of Queensland and the Queensland Museum.

[50] The proposal advanced by the PSC for a Cultural Centres Award is, in our view, consistent with the objectives of award modernisation and, in particular, clause 19(g) of the Attorney-General's Request (as varied) which requests the creation of a Modern Award to cover "Cultural Centres."

[51] The Commission does not accept the submission that the proposed creation of a Cultural Centres Award would complicate the industrial landscape. No cogent argument has been advanced by Together Queensland to support such a conclusion. The adoption of a separate award is consistent with the object of modernising awards set out in s140BA and the request of the Attorney-General under s140C. In coming to that conclusion, the Commission has taken into consideration the nature and context of the work performed by the staff, the majority of which are within the "Cultural Centre Precinct" at South Bank.

Shift rostering principles for Department of Transport and Main Roads Transport Inspectors

[52] Removal of clause S1.3.1(a)(i) from Section 3 of Schedule 1 to the Proposed Award (dealing with the Department of Transport and Main Roads) is sought on behalf of that Department. The clause sets out shift rostering principles to apply to Transport Inspectors who work ordinary hours on other than a day work basis. In particular, it prescribes the number of days break that employees "will be provided" for specified days of duty, and prescribes the latest time for shifts to finish before a rostered day off and the earliest time that the next working day can commence.

[53] Removal of the clause is sought on the basis that the clause, in its current form, restricts flexible rostering arrangements as provided for in s 71OJ(b) of the Act and is therefore a "non-allowable" matter.

[54] Subsection 71OJ(b) provides:

"A modern industrial instrument must not include a provision - ... that restricts flexible rostering arrangements."

[55] Removal of the clause is also sought on the basis of practical considerations. In brief, the submission for the Department is that expressly providing for two consecutive rest days in every seven day period limits the Department's ability to roster for large operations. The Department requires flexibility to roster, and contends that such flexibility could also enhance employees' work/life balance.

[56] Reference was made on behalf of the Department to provisions in clause 15.2 of the Proposed Award that deal with shift work arrangements. Those provisions refer to consultation about, and flexibility of, rostering arrangements.

[57] Together Queensland seeks to protect the entitlements to consecutive days off after specified days of work, and to days off being full calendar days. They note that the provisions in clause 15.2 are consultation provisions and do not prescribe entitlements to full days off in specified circumstances. They submit that removal of clause S1.3.1(a)(i) could lead to health and safety risks. Together Queensland also refers to s 140BB(2)(g) of the Act which states that, in performing its functions in carrying out the award modernisation process, the Commission "must have regard to ... the safety, health and welfare of employees."

[58] This issue has to be resolved by reference to s 71OJ(b) of the Act. In our view, the clause is of a type referred to in that section and hence must not be included in the Proposed Award.

[59] We do not accept that s 140BB(2)(g) of the Act compels a contrary conclusion. In our view, that general provision has to be read subject to the clear and specific terms of s 71OJ. In any case, removal of the clause is not necessarily inconsistent with s 140BB(2)(g) of the Act, because flexible rostering arrangements could benefit employees in certain circumstances.

[60] For those reasons we have concluded that clause S1.3.1(a)(i) of Section 3 of Schedule 1 to the Proposed Award must be removed from the Proposed Award.

Adjustment of Allowances

[61] Clause 13 of the Proposed Award provides for various specified categories of Allowances.

[62] Subclause 13(n) provides for the Adjustment of Allowances. It states:

"(n) Adjustment of Allowances

- (i) other than the expense related allowances at clauses 13(g), (i) and (l), respectively, all other monetary amounts specified in clause 13 are to be 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.

- (ii) expenses related allowances at clauses 13(g), (i) and (l) respectively, may be adjusted from time to time by way of separate application."

[63] Only paragraph (ii) is in issue. The expenses related allowances referred to in that paragraph are motor vehicle allowances, overtime meal allowances and meal breaks, and uniforms and laundry allowances.

[64] Each union submitted that the QPSOOE Award should provide for the automatic adjustment of all allowances.

[65] Support for their submissions is found in the following paragraphs of the Attorney-General's request, where the Attorney-General and Minister for Justice stated that:

"42. Allowances should be clearly and separately identified in modern awards.

43. The Commission is to ensure that all modern awards include an appropriate method or formula for automatically adjusting relevant allowances when minimum wage rates are adjusted."

[66] The Queensland Nurses Union notes that, under current arrangements, when a State Wage Case is determined, expense related allowances do not move with State Wage case adjustments. Separate applications must be made for these to be adjusted, usually in line with CPI movements. The Union also refers to the Federal award modernisation process which has replicated the Queensland State Wage Case approach, but with expense allowances moving automatically with any movement in the minimum wage.

[67] Consistently with the Attorney-General's request and the approach adopted for the adjustment of allowances in Federal modern awards, the Nurses Union proposes the inclusion of the following clause:

"13 (n) Adjustment of Allowances

- (i) Other than the expense related allowances at clauses 13(g), (i) and (l), respectively, all other allowances specified in clause 13 will be automatically increased from the same date and in the same manner as such monetary allowances are adjusted in any State Wage Case decision or other decision of the commission adjusting minimum wage rates in this award.
- (ii) Also at the time of any adjustment to the wage rates in this award, expense related allowances at clauses 13(g), (i) and (l), respectively will be automatically increased 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.

- (iii) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

<u>Allowance</u>	<u>Applicable Consumer Price Index figure</u>
Overtime Meal allowance	Take-away and fast foods sub-group
Uniforms and laundry allowance	Clothing and footwear group
Motor Vehicle allowance	Private motoring sub-group"

- [68] The PSC opposes the Unions' proposal, and submits that the current mechanism for adjusting expense-related allowances by way of application is sufficient and the status quo should be maintained.
- [69] When asked its position, were the Commission to accept the submissions of the Queensland Nurses Union, the PSC told us it had no position on which index was chosen.
- [70] We have concluded that an Adjustment of Allowances clause should be included in the QPSOOE Award and that it should be in the terms provided by the Queensland Nurses Union.

Typographical errors

- [71] The PSC draws attention to some errors in cross references to other clauses in clauses 15.5(a) and 23.5(d) of the Proposed Award.
- [72] We agree, and direct that:
- clause 15.5(a) begin with the words "Subject to clauses 15.5(c) and (e) all employees who work ..."; and
 - clause 23.5(d) read "The payments described in clause 23.5(c) shall be calculated on a majority of shift basis (see examples at clause 15.5(e))."

Conclusion

- [73] For the reasons outlined above, we make the following orders in relation to the proposed *Queensland Public Service Officers and Other Employees Award - State 2014*:
1. That a clause in the following terms be inserted:

"Procedures to implement facilitative Award provisions

Wherever facilitative provisions appear in this Award which allow for determination of the conditions of employment by agreement between the

Chief Executive and the majority of Employees affected, the following procedures shall apply:

- (a) Facilitative Award provisions can be negotiated between management and Employees who are directly affected by such proposals.
- (b) Employees may be represented by their local Union delegate/s and shall have the right to be represented by their local Union official/s.
- (c) In determining the outcome from facilitative provisions, neither party should unreasonably withhold agreement.
- (d) Agreement is defined as obtaining consent of greater than 50% of Employees directly affected.
- (e) Any agreement reached must be documented, and shall incorporate a review period.";

2. That clause 4.2 be deleted and inserted in lieu thereof the following clause:

"4.2 This award shall not apply to employees appointed pursuant to section 119 or section 148 of the Public Service Act 2008 employed by or on behalf of those entities listed in Schedule 5 to this award."

and the insertion of:

"Schedule 5 – List of 'Cultural Centres':

Queensland Art Gallery (including the Gallery of Modern Art)
 Queensland Museum
 State Library of Queensland
 The following business units of the Arts Queensland Division of the Department of Science, Information Technology, Innovation and the Arts (DSITIA) -
 Judith Wright Centre of Contemporary Arts
 The Centre of Contemporary Arts Cairns";

- 3. That the issue of the Modern Award coverage of the entities listed in order (2) be referred to the Award Modernisation Team;
- 4. That clause 8.9 be retained;
- 5. That clause S1.3.1(a)(i) of Section 3 of Schedule 1 be deleted;
- 6. That clause 13(n) be deleted and inserted in lieu thereof the following new clause 13(n):

"13(n) Adjustment of Allowances

- (i) Other than the expense related allowances at clauses 13(g), (i) and (l), respectively, all other allowances specified in clause 13 will be automatically increased from the same date and in the same manner as such monetary allowances are adjusted in any State Wage

Case decision or other decision of the commission adjusting minimum wage rates in this award.

- (ii) Also at the time of any adjustment to the wage rates in this award, expense related allowances at clauses 13(g), (i) and (l), respectively will be automatically increased 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.
- (iii) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

<u>Allowance</u>	<u>Applicable Consumer Price Index figure</u>
Overtime Meal allowance	Take-away and fast foods sub-group
Uniforms and laundry allowance	Clothing and footwear group
Motor Vehicle allowance	Private motoring sub-group";

7. That, pursuant to s 274(4)(a)(ii) of the *Industrial Relations Act 1999*, the proposed *Queensland Public Service Officers and Other Employees Award - State 2014* be remitted to the Award Modernisation Team for the purposes of making the necessary amendments consistent with these reasons; and
8. Within 30 days of the date of this order the amended proposed *Queensland Public Service Officers and Other Employees Award - State 2014* be returned to the Full Bench for the purposes of a making a modern award pursuant to s 140G(1)(b) of the *Industrial Relations Act 1999*.