

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re Making of a modern award - Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* [2014] QIRC 195

PARTIES: Together Queensland, Industrial Union of Employees

United Voice, Industrial Union of Employees, Queensland

State of Queensland (Department of Health)

Queensland Nurses' Union of Employees

The Australian Workers' Union of Employees, Queensland

CASE NOS: MA/2014/130
MA/2014/131
MA/2014/132
MA/2014/133
MA/2014/134

PROCEEDING: Making of a Modern Award

DELIVERED ON: 25 November 2014

HEARING DATE: 13 and 15 October 2014

MEMBER: Deputy President Kaufman
Industrial Commissioner Thompson
Industrial Commissioner Knight

ORDERS :

- 1. That the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* be made.**
- 2. That the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* commence operation on 17 October 2014.**
- 3. That those provisions of the *District Health Services Employees Award - State 2012*, insofar as they operate in respect of employees covered by the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014*, be repealed on and from 17 October 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999*.**

- CATCHWORDS:** MAKING OF A MODERN AWARD - Section 140C(1) of the *Industrial Relations Act 1999* - Request from the Attorney-General and Minister for Justice that a modern award for Health Practitioners and Dental Officers (Queensland Health) be made by 17 October 2014 - *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* - Modern Award made
- CASES:** *Industrial Relations Act 1999*, 71LA, 71LB, s 140BA, s 140BB, s 140C, s 140CC, s 140CD, s140D
Hospital and Health Boards Act 2011, s 67
Public Service Act 2008
District Health Services Employees Award - State 2012
Health Practitioners' (Queensland Health) Certified Agreement (No. 1) 2007 (HPEB1)
Health Practitioners' (Queensland Health) Certified Agreement (No. 2) 2011 (HPEB2)
Health Professionals and Support Services Award 2010
Public Services Officers and Other Employees Award - State 2014
Queensland Public Health Certified Agreement (No.8) 2011
Resident Medical Officers (Queensland Health) Award - State 2014
Re: Referral pursuant to s 140C(1) of the Industrial Relations Act 1999 for a modern award - Health [2014] QIRC 088
- APPEARANCES:** Mr A. Herbert, of Counsel, instructed by McCullough Robertson for the State of Queensland (Department of Health)
 Mr R. Rule, of Together Queensland Industrial Union of Employees
 Ms K. Badke, of United Voice, Industrial Union of Employees, Queensland
 Ms L. Booth, of the Queensland Nurses' Union of Employees
 Mr B. Watson, of The Australian Workers' Union of Employees, Queensland

Reasons for Decision

- [1] This Full Bench is tasked with making a modern award (the Award) for health professionals, including dental officers and health practitioners (Health), employed by the Queensland Government (Department of Health) and by prescribed hospital and health services established in accordance with the *Hospital and Health Boards Act 2011*.
- [2] The Award is required to be made by virtue of a request (the Request) by the Attorney-General and Minister for Health pursuant to section 140C(1) of the *Industrial Relations Act 1999* (the Act).

- [3] Section 140CC of the Act requires the Commission to carry out the award modernisation process in accordance with the Request.
- [4] Section 140CD requires the Commission to complete an award modernisation process by the date stated in the Request relating to the process or any later date stated in a variation notice.
- [5] In preparing our reasons we noted that by a variation dated 27 August 2014 the Request (which has been previously varied) was further varied to require the Commission to create a modern award for Health (the Award) by 31 August 2014.
- [6] In order that the parties could address us on the ramifications of making an award after the date mandated by s 140CD we relisted the matter for further hearing at 10.30 am on Wednesday 15 October 2014.
- [7] On the morning of 15 October 2014 we were provided with a further variation to the request which extended the time for the making of this award to 17 October 2014.
- [8] None of the parties submitted that there are now any impediments to the making of the Award and we consider that we are bound to make it, and will do so.

Background

- [9] On 1 September 2014, the Vice President received a proposed modern award to cover health professionals including health practitioners and dentists from Deputy President Bloomfield, who oversees the Award Modernisation Team (AMOD Team). The coverage of the proposed award conforms with a decision of a Full Bench of the Commission of 23 May 2014 which decided that there are to be four modern awards in Health: an award covering medical officers; an award covering nurses, including midwives; an award covering health professionals, including health practitioners and dentists; and an award covering all other staff not employed under the *Public Service Act 2008*¹. This Full Bench is only concerned with the making of an award for the third category - health professionals, including health practitioners and dentists. We do not differentiate between dentists and dental officers.
- [10] In referring the proposed award to the Vice President, Deputy President Bloomfield noted that there is no underpinning award for it in that it will be made as a result of the decision of the abovementioned Full Bench. We note that many of the employees to be covered by the Award were previously covered by the *District Health Services Employees Award - State 2012* ("DHSEA").
- [11] Before creating the draft that has been referred to this Full Bench the AMOD Team convened several conferences to which it invited relevant organisations to comment on the form of the Award. As a result of the consultation process many of the terms to be included in the Award are not contentious.
- [12] Following the making of various directions orders interested organisations being: the State of Queensland (Department of Health) (Queensland Health); Queensland Nurses

¹ Re: Referral pursuant to s 140C(1) of the Industrial Relations Act 199 for a modern award - Health [2014] QIRC 088.

Union of Employees (QNU); Together Queensland, Industrial Union of Employees (Together) and United Voice, Industrial Union of Employees, Queensland (UV) indicated those clauses in the proposed award to which they had objections and filed submissions in support of their positions. Pursuant to a direction requiring the filing of replies by 4.00 pm on 10 October 2014 Queensland Health, UV and Together filed their replies. The Australian Workers' Union of Employees, Queensland (AWU) which has an interest in Anaesthetic Technicians, has also filed submissions.

[13] Health professionals, including health practitioners, but not dentists, are covered by the *Health Practitioners (Queensland Health) Certified Agreement (No.2) 2011 (HPEB2)* ("HPEB2"). Dentists are covered by the *Queensland Public Health Certified Agreement (No.8) 2011*. It is these employees who will be covered by the Award.

[14] Chapter 5, Part 8 of the Act deals with the modernisation of awards.

[15] Sections 140BA, 140BB and 140C relevantly provide:

"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.

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;
 - (j) the representation rights of organisations and associations under this Act.
- (3) This section does not limit section 140D.

140C Minister may make award modernisation request

- (1) The Minister may give the commission a written notice (an award modernisation request) requesting that an award modernisation process be carried out.
- (2) An award modernisation request must state-
 - (a) details of the award modernisation process that is to be carried out; and
 - (b) the day by which the process must be completed.
- (3) The day stated in the notice under subsection (2)(b) must not be later than 2 years after the day on which the award modernisation request is given to the commission.
- (4) An award modernisation request may state any other matter about the award modernisation process the Minister considers appropriate.
- (5) Without limiting subsection (4), the award modernization request may-
 - (a) require the commission to-
 - (i) prepare progress reports on stated matters about the award modernisation process; and
 - (ii) make the progress reports available as stated in the request; or
 - (b) state permitted matters about which provisions must be included in a modern award; or
 - (c) direct the commission to include in a modern award terms about particular permitted matters; or
 - (d) give other directions about how, or whether, the commission must deal with particular permitted matters.
- (6) In this section-
permitted matter means a matter about which provisions may be included in a modern award under chapter 2A, part 3, division 1 or 2."

[16] Section 140D sets out the modern award objectives to which we have had regard in the making of the Award. It provides:

"140D Modern awards objectives

- (1) In exercising its chapter 5A powers, the commission must ensure modern awards, together with the Queensland Employment Standards, provide a minimum safety net of employment conditions that is fair and relevant.
- (2) For subsection (1), the commission must have regard to the following-
 - (a) relative living standards and the needs of low-paid employees;

- (b) the need to promote social inclusion through increased workforce participation;
 - (c) the need to promote flexible modern work practices and the efficient and productive performance of work;
 - (d) the need to ensure equal remuneration for male and female employees for work of equal or comparable value;
 - (e) the need to provide penalty rates for employees who-
 - (i) work overtime; or
 - (ii) work unsocial, irregular or unpredictable hours; or
 - (iii) work on weekends or public holidays; or
 - (iv) perform shift work;
 - (f) the likely impact of the exercise of the chapter 5A powers on business, including on productivity, employment costs and the regulatory burden;
 - (g) the need to ensure the modern award system-
 - (i) is simple and easy to understand; and
 - (ii) is certain, stable and sustainable; and
 - (iii) avoids unnecessary overlap of modern awards;
 - (h) the financial position considerations, including the likely impact of the exercise of the chapter 5A powers on those considerations;
 - (i) the likely impact of the exercise of the chapter 5A powers on-
 - (i) employment growth and inflation; and
 - (ii) the sustainability, performance and competitiveness of the Queensland economy.
- (3) Also, to the extent the commission's chapter 5A powers relate to setting, varying or revoking minimum wages in modern awards, the commission must establish and maintain a minimum safety net of fair minimum wages, having regard to-
- (a) the matters mentioned in subsection (2)(a) to (d), (h) and (i); and
 - (b) providing a comprehensive range of fair minimum wages to-
 - (i) young employees; and
 - (ii) employees engaged as apprentices or trainees; and
 - (iii) employees with a disability.
- (4) The objectives of the commission under subsections (1) and (2) are the modern awards objectives..."

[17] Chapter 2A, Part 3 of the Act prescribes the content of modern industrial instruments, including modern awards. Section 71LA provides that only provisions that are required or permitted, as described in that section, may be included in a modern industrial instrument, which includes a modern award. Section 71LB deals with non-allowable provisions which are provisions that may not be included in a modern industrial instrument. Division 2 sets out the required content for all modern industrial instruments in subdivision 1 and for modern awards in subdivision 2. Division 3 deals with permitted content, for all modern industrial instruments in subdivision 1 and for modern awards in subdivision 2. Division 4 in subdivision 1 sets out the non-allowable content for all modern industrial instruments, that is, it sets out those matters that may not be included in any modern industrial instrument. Subdivision 2 deals with non-allowable content for modern awards.

[18] We have endeavoured to ensure that the Award complies with these requirements.

The Coverage of the Award

- [19] The nature of that portion of Health to be covered by the Award can be gleaned from its coverage clause. The Award applies to the health practitioners and dental officers described in Schedule 2 who are employed by Queensland Health or by prescribed hospital and health services established in accordance with the *Hospital and Health Boards Act 2011*. Under the provisions of that Act, employees who work at prescribed hospitals and health services cease to be employed by Queensland Health and are instead employed directly by those services. There is a devolution for the responsibility of operating those services from the Department to the services.
- [20] Although there has not been a dedicated award specifically setting out the terms and conditions of health professionals, the classifications to be covered by the Award, including dentists, are presently to be found in the DHSEA, amongst many other non-professional classifications that will not be covered by the Award. However, there has, for some years, existed a certified agreement dealing specifically with health professionals, including health practitioners, but not dentists. The current iteration of that agreement is HPEB2. As was observed by the Full Bench in its decision in relation to what awards are to be made in *Health*,² health practitioners and dentists are skilled professionals who generally hold some form of tertiary qualification or equivalent. It is for that reason that the industrial parties, over the course of years, created the first certified agreement for health professionals in 2007. HPEB2 replaced it in 2011.
- [21] We heard the matter on 13 October 2014. Affidavits were filed on behalf of Christine Ann Fox, Ross Douglas Uhlmann, Peter Lindsay Cattach, James Patrick Gannon, and Julie Ann Hulcombe. None of the deponents was required for cross-examination and, accordingly we have taken the affidavits as read. We do not consider it necessary to mark them as exhibits.
- [22] Many of the clauses in the proposed Award are not contentious and we accept that those clauses are appropriate for inclusion in a modern award and they will form part of the award that we make. We have made some grammatical and typographical changes which do not impact upon those clauses.
- [23] We will now deal with the clauses that one or other of the parties has objected to or sought to change.

Minor Amendments

- [24] Minor changes have been suggested by Queensland Health to clauses 3, 9.2(f), 9.3(f), 12.2(a), 12.9, 12.13(d), 15.3, 23(a), 23(b), 23(c), 23(d), 25(b), 28(c) and 29. As none of the unions has objected to the changes, we will make the changes sought by Queensland Health.

Clause 4 - Coverage

² *Re: Referral pursuant to s 140C(1) of the Industrial Relations Act 1999 for a modern award - Health* [2014] QIRC 088.

- [25] QNU seeks to have the award apply to health practitioners and dental officers *who are health service employees* described in schedule 2 of the award. The emphasised words are not currently in the proposed award. We accept this amendment as it makes it clear that the employees are those employed by either Queensland Health or hospital or health services, which are defined in the Award.
- [26] QNU also seeks to have the *health service chief executive* of each prescribed hospital and health service identified as the person to whom the award applies. The emphasised words are not currently in the proposed award. We accept the submission of Queensland Health that pursuant to s 67 of the *Hospital and Health Boards Act 2011* it is the prescribed service, the hospital health service, that is the employer and we will not amend clause 4(b) of the proposed award.

Clause 9.4 - Probationary employment

- [27] QNU seeks to restrict probationary employment to a period not greater than six months. The current proposed clause permits probationary employment for a reasonable period. We consider that the proposed clause ought to be adopted. "Reasonable" is a generally used and understood expression. We agree with Queensland Health that a cap of six months will limit the flexibility of employers to agree with employees for a probationary period of more than six months in appropriate circumstances. We will not insert the limitation sought by QNU.

Dental assistants

- [28] UV submits that the Award should extend to dental assistants. The main basis for this submission is that dental assistants are the only members of a dental team who will not be covered by the Award. We will not extend the coverage of the award to dental assistants because they are not health professionals in the sense that they are not required to have a certificate, diploma or degree in order to be able to perform their functions. They are not an occupational group covered by HPEB2 or its predecessor and, in our view are not an appropriate group for coverage by the Award.
- [29] Accordingly, contrary to UV's submission, the "dental officer stream" will not be changed to the "dental stream". Clauses 12.2(a) and (b) will remain in the form of the proposed award.

Work Level Statements v Generic Level Statements

- [30] The proposed award contains, at Schedule 3, a list of Generic Level Statements (GLS). GLS are defined in the proposed award as meaning "a broad, concise statement of the duties, skills and responsibilities indicative of a given classification level."
- [31] Together and UV seek the retention of the Work Level Statements (WLS) that currently appear in Schedule 2 to HPEB2. Under the heading "What are the work level statements?" HPEB2 states:

"The work level statements aim to describe the scope and nature, knowledge, skills and expertise and accountability of work which is undertaken at each level to ensure consistency of classification across this workforce. Each level systematically builds on the level below.

Although the work level statements provide a generic description of health practitioner roles at each of the given HP levels, they are not a job description and are not designed to be used as such."

[32] The unions seek a similar definition in the award that we will make:

"Work Level Statements (WLS) provide a generic description of health practitioner roles at each of the given health practitioner (HP) levels which aim to describe the scope, nature, knowledge, skills, expertise and accountability of work undertaken at each level to ensure consistency of classification across the workforce."

[33] The unions oppose the replacement of WLS with GLS albeit that UV seeks to retain the GLS from the DHSEA for the dental stream. The unions submit that WLS are more appropriate primarily because they are an agreed set of descriptors that were developed by the industrial parties over a long period of negotiation for *Health Practitioners' (Queensland Health) Certified Agreement (No. 1) (HPEB1)* ("HPEB1") and HPEB2. They point to clause 17.2 of HPEB2 which provides:

"...the parties agree to review and clarify the work level statements within three months of certification of the Agreement. Once the final version of the work level statements is completed, an application will be made to incorporate the work level statements into the Award in accordance with clause 10.1."

[34] The unions submit that the WLS are well known and understood by those covered by the proposed award, in that they have been developed to accurately describe the expectations at each level and that the agreement of the parties as, recorded at clause 17.2 of HPEB2, ought to be given effect.

[35] Mr Rule, who appeared for Together, submitted that the issue is largely semantic and although the WLS are more detailed, there is not a vast difference between the two sets of descriptors. He further submitted that the WLS are necessary in order that, when a new position is created in a health service, the health service needs to be able to identify what is the appropriate classification for that position and in order to enable it to do that it needs descriptors. For those reasons, the award is the most appropriate place in which to have those descriptors.

[36] Queensland Health submitted that WLS are more detailed descriptors of the knowledge, skills and expertise and accountability required of individual roles than are the GLS. It notes that all current Queensland Health awards contain GLS, as do awards covering many public service employees. Queensland Health further submits that weight should be given to the fact that the corresponding federal modern award - the *Health Professionals and Support Services Award 2010* contains GLS only. Our perusal of the federal award discloses that the descriptors in the federal award are significantly less detailed than are the GLS in the proposed award.

[37] As to the intention of the parties described in clause 17.2 of HPEB2, Queensland Health submits that, albeit the review was finalised in May 2013, the changes to the Act made when the award modernisation provisions were introduced have overtaken events. The repeal of s 25 precludes a pre-modernisation award being varied, and the

modern award objectives and other provisions in Part 8 of the Act have the effect that it is not appropriate to include WLS in the Award.

- [38] In our view GLS are more appropriate for inclusion in a modern award than are WLS. Although to some extent they serve the same purpose, WLS are more prescriptive and descend to levels of detail that are more appropriately dealt with by an enterprise agreement. This will allow greater flexibility by enabling the parties to deal with emerging situations as they arise.
- [39] We observe that the WLS contained in HPEB2 will continue to operate and prevail over the Award until a new certified agreement is made or for three years from the nominal expiry date of HPEB2.
- [40] The Award will not contain WLS. We will incorporate the GLS in the proposed draft save that where the word "role" is used as an abstract noun we will replace it with the concrete noun "employee" where it is intended to be used in the active voice.

Minimum Salary Levels - clause 12

- [41] The salary rates contained in the proposed award were prepared by the AMOD Team using the methodology proposed by Queensland Health.
- [42] Section 140D(1) of the Act requires the commission to ensure that modern awards, together with the Queensland Employment Standards, provide a minimum safety net of employment conditions that is fair and relevant.
- [43] Although the DHSEA covers health professionals and dental officers the classification structure in that award does not reflect the classification structure that in practice applies to those employees under HPEB2. The current rates in the DHSEA are based on the enterprise bargaining salary rates for employees covered by that award as at on September 2007 and increased by the amounts awarded by State Wage Case General Rulings since that time. The same methodology has been used to arrive at the rates contained in the proposed award.
- [44] The unions submit that the existing certified agreement rates should be the minimum rates provided for by the Award. We do not accept this submission. The rates proposed by the unions would not represent a properly fixed minimum safety net.
- [45] As the rates appearing in the proposed award do not reflect the September 2014 State Wage Case General Ruling, Queensland Health has provided an amended schedule of rates incorporating those increases. It is those rates that will be included in clause 12 of the Award.

Appointment to classification levels - clause 12.6

- [46] Clause 12.6 of the proposed award provides entry levels for the appointment to various classification levels dependent on the qualifications of the person being appointed to the position. Queensland Health objects to the inclusion of clause 12.6 on the basis that it is derived from HPEB2 and, further, that it has not operated satisfactorily to date because it does not differentiate between those employees who, on appointment,

are "work ready" and those who require a period of supervised practice in order to fulfil the requirements of the relevant professional body for their discipline.

- [47] Although we have some sympathy with the desire of the unions to ensure that new appointees are appropriately located in the classification scheme, we are not inclined to include a clause derived from a certified agreement which does not appear to be operating satisfactorily. Julie Ann Hulcombe, a chief allied health officer with Queensland Health, in her affidavit, detailed some examples of the anomalies that have arisen under this provision.
- [48] We note that clause 12.6 will be the subject of bargaining for the next certified agreement and that it will continue to operate until it is replaced. In the circumstances we do not consider it appropriate to be included in the Award.

Allowances - clause 13(c)(v)

- [49] Clause 13(c)(v) entitles an employee to be paid a meal allowance of \$12.10 in the event that the employee has been given notice to work overtime but is not required to do so and has brought a prepared meal to work. Queensland Health objects to the inclusion of this clause which currently appears in HPEB2. The unions support its retention and note that it is included in the recently made *Queensland Public Service Officers and Other Employees Award - State 2014* ("Public Service Award"). Queensland Health notes that the clause does not appear in the also recently made *Resident Medical Officers (Queensland Health) Award - State 2014* ("RMO Award") which it submits is a more relevant comparator.
- [50] We do not consider that this clause ought to appear in a modern award. In our view it does not represent a safety net provision and is more appropriate as a subject for enterprise bargaining. We note that the inclusion of that clause in the Public Service Award was not opposed.

Divisional and district parities

- [51] The unions seek the inclusion of an allowance currently found in the DHSEA which was intended to compensate employees for hardships associated with working in remote areas. The quantum of the allowance ranges from 90 cents per week (\$46.80 per annum) to \$3.25 per week (\$169 per annum). Christine Ann Fox, in her affidavit filed on behalf of Together, deposed that this small allowance provides some incentive to attract a skilled workforce to regional, rural and remote areas of Queensland and that the loss of the allowance is likely to impact on the ability to recruit experienced health practitioners to positions outside the south-east corner of Queensland potentially affecting the health care of regional, rural and remote Queenslanders.
- [52] Queensland Health submitted that the allowance has limited effect in its capacity to attract and retain health professionals, instead pointing to a number of existing and proposed incentive programs at an enterprise and local level which adequately provide for the attraction and retention needs of health professionals and dentists.
- [53] We agree that this relatively small amount would have limited bearing upon the recruitment or retention of employees in rural and remote areas of Queensland.

Queensland Health also observed that the RMO Award does not contain such an allowance and notes that HPEB2 provides much more realistic monetary incentives to employees in remote areas.

[54] Although a Full Bench decided to include such a clause in the Local Government Award, we have decided that it ought not be included in the Award as we consider it desirable, in this instance, that the Award be consistent with the RMO Award.

On call - additional payments - clause 18.5
Emergency Clinical On-Call Allowance - clause 18.6

[55] Clauses 18.5 and 18.6 are interrelated and will be considered together.

[56] Clause 18.5 provides an allowance for employees who are required to be on call, in other words available to be recalled to work. The quantum of allowance differs depending upon whether the employee is required to be on call during public holidays, etc. The substance of the clause is not in contention, however Queensland Health has proposed an amended form of words. The proposal makes it clear that the on-call payment is a specified percentage of the prescribed hourly rate for one hour in respect of each instance of on-call. As this is not as clear in the clause contained in the proposed award, clause 18.5 will reflect the terms of Queensland Health's proposal which appears in attachment 11 of its submissions.

[57] The emergency clinical on-call allowance provided by clause 18.6 is in substitution for that of clause 18.5. Its provisions apply only to employees who are required to be on emergency clinical on-call for essential direct emergency clinical interventions where patient health will likely be compromised without the timely intervention of the health practitioner. A person who is on emergency clinical on-call must be able to return to duty within 30 minutes of being recalled to work. This is in contrast to an employee who is on-call and entitled to the clause 18.5 payment. Such an employee may take significantly longer to return to work.

[58] In support of the retention of clause 18.6 the unions rely on the affidavit of Ms Fox who stated that when she was on-call the on-call payment did not cover the cost of employing a babysitter on the occasions that Ms Fox needed to be at a location that enabled her to return to work within 30 minutes of being recalled to duty.

[59] At our request the parties gave us an indication of the differences in the quantum between the two sets of allowances. Queensland Health provided us with a table based on the rates as appearing in the proposed award. The table is set out below.

| | | Whole Day (24 hrs) | Night (12 hrs) | Any other |
|------------------------|--|---------------------------|-----------------------|------------------|
| HP 3.7 SWC | | | | |
| rates 1/09/2013 | | | | |

| | | | | | |
|--|-----------------|----------------|----------------|--------------------|--|
| 18.5 Standard on call | \$ 39.42 | \$37.45 | \$23.65 | \$18.72 | One off payment for each instance |
| 18.6 emergency 7% for all hours | \$ 2.76 | \$66.23 | \$33.11 | \$2.76/hour | Approx 6.8 hours equates to the same payment as above. If the employee is rostered on less than this he/she will receive a lesser amount than standard on call |

| | | | | |
|--|-----------------|-----------------|----------------|--------------------|
| HP 3.47 SWC rates | | | | |
| 1/09/2014 | | 95% | 60% | 47.50% |
| 18.5 Standard on call | \$ 40.60 | \$38.57 | \$24.36 | \$19.29 |
| 18.6 emergency 7% for all hours | \$2.84 | \$ 68.21 | \$34.10 | \$2.84/hour |

| HP3.7 | Fortnightly | Hourly |
|--------------|--------------------|---------------|
| 1/09/2013 | \$2,995.70 | \$39.42 |
| 1/09/2014 | \$3,085.60 | \$40.60 |

- [60] It is apparent that in some circumstances employees who are on emergency on-call can receive significantly more pursuant to the provisions of clause 18.6 than they would pursuant to those of clause 18.5. However, in other circumstances the differences between the two amounts are not so great.
- [61] In our view it is appropriate that a modern safety net award contain a clause such as 18.6 to compensate employees for the undisputed potential additional cost, as well as the inconvenience and likely disruption to family life, for holding themselves available to return to work at short notice.
- [62] Accordingly clause 18.6 will be retained in the Award. Its retention will require the inclusion of the words "other than those employees on emergency clinical on-call" into the version of clause 18.5 that we favour.

Recall to duty - from on-call - clause 18.8

- [63] Queensland Health seeks the addition of the words "for the day" at the end of clause 18.8(c). In an email received on 14 October 2014 Queensland Health clarified its position to being that the words "for the day" should appear after the words "4 hours' work" where first appearing. We do not think that the words clarify the intent of that clause and we will not include them.³
- [64] UV seeks the inclusion of examples into clause 18.8(d). We are not inclined to accede to this as we believe it may result in confusion. UV also seeks to have the following words added at the end of clause 18.8(d): "The employee will be responsible for the recording of the nature and the times of contact for subsequent verification by the chief executive." This seems to be an appropriate safeguard for both the employer and employee concerned. We will include those words at the end of clause 18.8(d).

Fatigue leave/rest period after overtime - clause 18.11

- [65] This clause, which deals to some extent with fatigue management, provides for specified breaks between periods of duty. The clause is apparently drawn from the DHSEA.
- [66] The proviso to clause 18.11 in the proposed award reads: "Clause 18.11 does not apply to employees who work less than two hours when recalled to duty (see clauses 18.8 and 18.9), *inclusive of travelling time*, on one or more recalls." The italicized words do not appear in the equivalent clause in the DHSEA and Queensland Health objects to their inclusion in the Award. It again notes that the RMO Award does not provide for the inclusion of travelling time in the equivalent clause in that award. It notes that the inclusion of the words will in effect provide a superior entitlement, in excess of existing award entitlements, to health professionals and dental officers and, further, that similar award provisions for other Queensland Health staff, including nurses, do not provide such entitlements. The unions rely on the Public Service Award which contains an equivalent provision.
- [67] In our view it is generally preferable that there be consistency, where appropriate, across Queensland Health. As this is such an instance, the words "inclusive of travelling time" will not form part of the proviso to clause 18.11 in the Award. In our view fatigue management issues are generally best dealt with at an enterprise level having regard to the specific considerations arising at the enterprise.

Conclusion

- [68] The full bench is satisfied that the Award complies with the requirements of the Act in relation to the making of modern awards and is consistent with the statutory objects of the award modernisation process and the requirements of the Request.

Orders

³ We provided these reasons in unpublished form to the parties when we made the award on 15 October 2014. We gave them 14 days to point out any typographical and like errors. Queensland Health in its submissions again contended for the introduction of the words "for the day" into clause 18.8. We heard the parties on 6 November 2014 and acceded to Queensland Health's request in order that the Award reflect our intention.

[69] For the reasons set out above, the full bench makes the following orders:

1. That the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* be made.
2. That the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* commence operation on 17 October 2014.
3. That those provisions of the *District Health Services Employees Award - State 2012*, insofar as they operate in respect of employees covered by the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014*, be repealed subject to s 824 of the *Industrial Relations Act 1999* on and from 17 October 2014.