QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*Re: Making of a modern award - Queensland Local Government Industry Award - State 2014* [2014] QIRC 149
PARTIES:	Local Government Association of Queensland Ltd Queensland Services, Industrial Union of Employees The Australian Workers' Union of Employees, Queensland Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland The Electrical Trades Union of Employees, Queensland Plumbers & Gasfitters Employees' Union Queensland, Union of Employees Transport Workers' Union of Australia, Union of Employees (Queensland Branch) Queensland Nurses' Union of Employees The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees Queensland Independent Education Union of Employees United Voice, Industrial Union of Employees, Queensland Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland
CASE NOS:	MA/2014/3, MA/2014/5, MA/2014/6, MA/2014/13, MA/2014/18, MA/2014/28, MA/2014/30, MA/2014/39, MA/2014/40, MA/2014/43, MA/2014/49, MA/2014/50, MA/2014/51, MA/2014/52, MA/2014/64, MA/2014/77, MA/2014/79, MA/2014/114, MA/2014/115, MA/2014/116, MA/2014/117, MA/2014/118, MA/2014/119, MA/2014/120,

MA/2014/121, MA/2014/122, MA/2014/123, MA/2014/124, MA/2014/125, MA/2014/127, MA/2014/129

PROCEEDING: Making of a Modern Award

DELIVERED ON: 26 September 2014

HEARING DATES: 28 August 2014
11, 17, 20 and 21 September 2014

MEMBERS: Vice President Linnane
Deputy President O'Connor
Industrial Commissioner Neate

ORDERS :

1. **That the *Queensland Local Government Industry Award - State 2014* be made.**
2. **That Clauses 1 and 2 of the *Queensland Local Government Industry Award - State 2014* commence operation on 1 October 2014 subject to s 824 of the *Industrial Relations Act 1999*.**
3. **That the remaining clauses of the *Queensland Local Government Industry Award - State* 2014 commence operation on 1 January 2015 subject to the provisions of s 824 of the *Industrial Relations Act 1999*;**
4. **That the *Aboriginal and Torres Strait Islander Health Services Officers Interim Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
5. **That the *Award for Accommodation and Care Services Employees for Aged Persons - South Eastern Division 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
6. **That the *Award for Accommodation and Care Services Employees for Aged Persons - State (Excluding South-East Queensland) 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City**

Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

7. **That the *Building Trades Public Sector Award - State 2002*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
8. **That the *Children's Services Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
9. **That the *Clerical Employees' Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
10. **That the *Early Childhood Education Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
11. **That the *Engineering Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
12. **That the *Health and Fitness Centres, Swim Schools and Indoor Sports Award - State 2012,* insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
13. **That the *Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South-Eastern Division 2012,* insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from**

30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

14. **That the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003* be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
15. **That the *Municipal Officers' (Aboriginal and Islander Community Councils) Award 2004* excluding Clause 13.1 and Clause 20.1.2 be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
16. **That Clause 13.1 and Clause 20.1.2 of the *Municipal Officers' Award (Aboriginal and Islander Community Councils) Award 2004* be repealed on and from 31 March 2015 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
17. **That the *Nurses' Aged Care Award - State 2005*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
18. **That the *Nurses Award - State 2005*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
19. **That the *Nurses' Domiciliary Services Award - State 2003*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
20. **That the *Queensland Local Government Officers' Award 1998* (excluding clause 12.1 and Clause 23.1.2) be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.***
21. **That Clause 12.1 and Clause 23.1.2 of the *Queensland Local Government Officers' Award 1998* be repealed on and from 31 March 2015 subject to the provisions of s 824 of the *Industrial Relations Act 1999*.**

22. That the *Theatrical Employees' Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

23. That the *Tour Guides Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

24. That the *Clerks - Private Sector Award 2010,* an award of the Fair Work Commission, not continue to operate in the Queensland Local Government sector (excluding Brisbane City Council) as and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

25. That the *Professional Employees Award 2010*, an award of the Fair Work Commission, not continue to operate in the Queensland Local Government sector (excluding Brisbane City Council) as and from 30 September 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 modern award for Local Government sector be made by 30 September 2014 - *Local Government Industry Award - State 2014* - Modern Award made

CASES: *Industrial Relations Act 1999*, ss 71LA, 71LB, 71M, 71MA, 71MB, 71MC, 71N, 71NA, 71NB, 71NC, 71ND, 71O to 71OK 140C, 140CC, 140D.
Industrial Relations Regulation 2011, reg 146A
Scott v Handley [1999] FCA 404.
Electrical Engineering Award - State (1963) 54 QGIG 423.
Queensland Council of Unions and Or AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (2003) 173 QGIG 1417.
Re: Referral pursuant to s 140C(1) of the Industrial Relations Act 1999 for a modern award - Local Government [2014] QIRC 089.

Award Modernisation - Decision - Full Bench [2009] AIRCFB 345.
Award Modernisation - Decision re Stage 4 Modern Awards [2009] AIRCFB 945.
Award Modernisation Decision - Full Bench [2009] AIRCFB 345.
Australian Municipal, Administrative, Clerical and Services Union re Airline Operations Ground Staff Award 2010 [2010] FWAFB 965.

APPEARANCES:

Mr C. Murdoch, Counsel instructed by Clayton Utz for the Local Government Association of Queensland Ltd
Ms M. Robertson, of The Queensland Services, Industrial Union of Employees
Mr B. Watson, of The Australian Workers' Union of Employees, Queensland
Ms K. Allen, of the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland
Ms K. Inglis, of The Electrical Trades Union of Employees, Queensland
Ms M. Delaware, of the Plumbers & Gasfitters Employees' Union Queensland, Union of Employees
Mr A. Carter, of the Transport Workers' Union of Australia, Union of Employees (Queensland Branch)
Ms L. Booth, of the Queensland Nurses' Union of Employees
Ms K. Scott, of The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees
Mr J. Spriggs, of the Queensland Independent Education Union of Employees
Ms K. Badke, of United Voice, Industrial Union of Employees, Queensland
Mr R. Reitano, Counsel instructed by Hall Payne Lawyers for the Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (at the hearing on 11 September 2014 only) and Mr T. O'Brien on 20 and 21 September 2014

DECISION

[1] On 15 August 2014, Deputy President Bloomfield referred the Award Modernisation Team's (AMOD Team) Exposure Draft No. 1 of a proposed Local Government Industry Award - State 2014 to the Vice President of the Queensland Industrial Relations Commission (Commission) for referral to a Full Bench of the Commission. On the same date the Vice President referred Exposure Draft No. 1 to the Full Bench as currently constituted.

[2] Directions for the further conduct of the matter were issued to those organisations involved in the Queensland local government area (excluding Brisbane City Council) on 22 August 2014. In this decision, any reference to the Local Government sector is a reference to the sector excluding the Brisbane City Council. Those directions sought the filing of objections to the proposed award by close of business on 25 August 2014 and notified the Objectors of a proposed hearing of their objections on Saturday 20 and Sunday 21 September 2014. Objections to the proposed award were received from the following organisations:

The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees (APESMA) in MA/2014/114;

Local Government Association of Queensland Ltd (LGAQ) in MA/2014/115 and MA/2014/129;

Plumbers & Gasfitters Employees' Union Queensland, Union of Employees (PGEU) in MA/2014/116;

Transport Workers' Union of Australia, Union of Employees (Queensland Branch) (TWU) in MA/2014/117;

The Australian Workers' Union of Employees, Queensland (AWU) in MA/2014/118;

The Electrical Trades Union of Employees, Queensland (ETU) in MA/2014/119;

Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (AMWU) in MA/2014/120 and MA/2014/127

United Voice, Industrial Union of Employees, Queensland (United Voice) in MA/2014/121;

Queensland Independent Education Union of Employees (QIEU) in MA/2014/122;

Queensland Nurses' Union of Employees (QNU) in MA/2014/123;

Queensland Services, Industrial Union of Employees (QSU) in MA/2014/124; and

Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (CFMEU) in MA/2014/125.

These organisations are collectively referred to in this decision as the Objectors.

[3] Deputy President Bloomfield's referral to the Vice President advised that he had convened eight (8) Conferences of the Objectors during the period February 2014 to August 2014. The Deputy President convened a further Conference of the Objectors following the issuing of the referral.

[4] After receiving objections from each of the Objectors to Exposure Draft No. 1 of the proposed award, Deputy President Bloomfield issued the AMOD Team's Exposure Draft No. 2 of the proposed award. The Full Bench at a Mention on 28 August 2014 then issued further directions for the conduct of this matter including an opportunity for the Objectors to file additional objections to Exposure Draft No. 2 of the proposed award, the filing of written submissions by 9 September 2014 and the filing of additional submissions by 15 September 2014. Concerns were raised by many of the Objectors as to the limited timeframe within which they were being required to provide their objections and their written submissions.

Timeframe for Making the Modern Award

[5] The Full Bench has been aware, since the referral of the proposed award to it on 15 August 2014, of the limited timeframe within which it was required to make a modern award for the Local Government sector. In this regard we refer to the following legislative provisions:

"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 modernisation 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."

and

"140CC Procedure for carrying out modernisation process

(1) The commission must carry out the award modernisation process in accordance with the award modernisation request.

(2) Subject to subsection (1) -

(a) the commission may decide the procedure for carrying out the award modernisation process; and

(b) without limiting paragraph (a), the commission may inform itself in any way it thinks appropriate, including by consulting with any person, body or organisation in the way the commission considers appropriate.

(3) To remove any doubt, it is declared that subsection (2) does not limit the powers of the commission under any other provision of this Act."

[6] The Attorney-General and Minister for Justice (Attorney-General) provided the Vice President with a Request under Section 140C(1) of the *Industrial Relations Act 1999* (Act) in January 2014 (Request). In that Request the Attorney-General identified "Local government (excluding Brisbane City Council)" as a priority industry/occupation for award modernisation. That Request provided as follows at paragraph 20:

"When undertaking the award modernisation process with regard to the Local Government sector (excluding Brisbane City Council), the Commission is to give consideration to consolidating the *Queensland Local Government Officers Award 1998;* the *Municipal Officer's Award (Aboriginal and Islander Community Councils) Award 2004;* and the *Local Government Employees (Excluding Brisbane City Council) Award State 2003* (collectively, the Awards) and creating a new modern Local Government Industry Award covering employers and employees subject to those Awards."

and at paragraph 21:

"When undertaking the award modernisation process with regard to the Local Government sector (excluding Brisbane City Council), the Commission is also to endeavour, where practicable, to review any other awards which underpin Local

Government Agreements which nominally expire throughout the first half of 2014, in order that negotiations for the replacement of those agreements can be commenced in a timely manner."

[7] At paragraph 17 of that Request, the Attorney-General stated that the Commission was to complete the award modernisation process by 31 December 2014 and at paragraph 18 required the Commission to "as soon as practicable, but by no later than 30 June 2014, have created modern awards for each of the priority industries or occupations identified at paragraph 19 of this request". As mentioned previously, the Local Government sector was one of those priority industries or occupations.

[8] That Request was placed on the Commission's website in January 2014. The Request signed by the Attorney-General was also provided to the Queensland Council of Unions to disseminate to its affiliates. All Objectors to this proposed award would thus have been aware, as at January 2014, of the timeframe for completion of a modern award for the Local Government sector, i.e. by 30 June 2014.

[9] On 2 May 2014, the Attorney-General forwarded a Variation to his earlier Request under s 140C(1) of the Act (May Variation). The May Variation resulted from concerns about the timetable for the completion of award modernisation expressed to the Attorney-General by the Vice President. The May Variation extended the deadline for the Commission to complete a modern award for the Local Government sector from 30 June 2014 to 31 August 2014. The May Variation was placed on the Commission's website shortly after it was received so that all Objectors to this proposed award would have been aware of that extended deadline.

[10] In correspondence received by the Vice President on 29 August 2014, the Attorney-General issued a further Variation to his Request under s 140C(1) of the Act (August Variation). In the August Variation the deadline for the Commission to make an award for the Local Government sector was extended to 30 September 2014. The August Variation was placed on the Commission's website shortly after receipt and was thus available to all Objectors to the proposed award.

[11] In the initial Request under s 140C of the Act and in both the May Variation and the August Variation, the Attorney-General stated in paragraph 18(b) that the Commission shall "where an agreement has become a 'continuing agreement', ensure that the relevant award or awards are modernised no later than the nominal expiry date of the 'continuing agreement'. The nominal expiry date of a number of 'continuing agreements' in the Local Government sector is 1 October 2014 whilst other 'continuing agreements' in the sector have a nominal expiry date of 17 October 2014 and others, a nominal expiry date beyond 17 October 2014". Under paragraph 18(b) of the Attorney-General's Request and his Variations the Commission must make a modern award for the Local Government sector by 1 October 2014.

Appeal and Adjournment Application

[12] Following the issuing of directions for the further conduct of this matter at a Mention on 28 August 2014, the CFMEU filed, on 1 September 2014, a Notice of Appeal (together with a Stay Application) against the Full Bench's directions (C/2014/40). At the Mention of C/2014/40 on 3 September 2014, the Vice President once again advised the parties of

the legislative requirement placed on the Full Bench to make an award for the Local Government sector prior to 1 October 2014, referring the Objectors to the provisions of s 140CC of the Act, the Attorney-General's Request and the August Variation. The Vice President suggested that the CFMEU and all other Objectors represented at that Mention should raise any concerns they may have with the timeframe with the Attorney-General.

[13] On 11 September 2014, the CFMEU made an oral application to the Full Bench seeking the adjournment/vacation of the hearing dates of 20 and 21 September 2014. Whilst the matter had been listed for Mention only on that date, the Full Bench, in the absence of any objection, decided to hear the CFMEU's oral application. Once again all Objectors to the proposed award were represented at that hearing. During the course of that hearing the Objectors were asked whether they had raised their concerns about the timeframe for the making of a modern award for this sector with the Attorney-General. No Objector, including the CFMEU, indicated that they had raised any concern about the limited timeframe with the Attorney-General.

[14] In rejecting the CFMEU's oral application the Full Bench indicated that it would deliver its reasons for that decision in due course. Those reasons are contained in this decision.

[15] The CFMEU had been aware since January 2014 that a modern award for the Local Government sector was required to be made by 30 June 2014. Subsequent Variations to that Request have extended the timeframe to 30 September 2014. A perusal of the Attorney-General's Request under s 140C(1) of the Act and the provisions of Chapter 5 Part 8 of the Act would have left the CFMEU in no doubt whatsoever of the timeframe for the making of this modern award. The CFMEU was also aware that some of the Local Government sector's "continuing agreements" expired on 1 October 2014. In its written submission on the adjournment application, the CFMEU acknowledged that Regulation 146A of the *Industrial Relations Regulation 2011* prescribed 1 October 2014 as the expiry date of some "continuing agreements" in the Local Government sector and that the expiry date for other "continuing agreements" in the sector was 17 October 2014 i.e. twelve months from the introduction date of the legislation.

[16] The CFMEU submitted that the rules of procedural fairness were not ousted by provisions in the Act dealing with the making of modern awards in the absence of plain words of necessary intendment. No such plain words of necessary intendment were contained in s 140CC of the Act. The CFMEU submitted that s 140CC of the Act bound the Commission to carry out the award modernisation process in accordance with the Attorney-General's Request but submitted that the timetabling date in the Minister's Request was not binding having regard to the terms of s 140C(2)(b) of the Act.

[17] It was argued by the CFMEU that s 140C(2)(b) of the Act stipulates when the award modernisation process must be completed (i.e. within 2 years) and that the modernising of awards in the Local Government sector need only thus be completed by 31 December 2015. The Full Bench acknowledges that, pursuant to s 140C(2)(b) of the Act, the award modernisation process must be completed by 31 December 2015 (i.e. the modernisation of all awards within the Commission's jurisdiction). It is, however, the Full Bench's view that the finalisation of the whole process of award modernisation by 31 December 2015 does not enable the Commission to disregard the provisions of s 140CC(1) of the Act, i.e. that the Commission must carry out the award modernisation process in accordance with the award modernisation Request of the Attorney-General. The Request provides a

program for the completion of the award modernisation process by 31 December 2015. The program has obviously been developed by the Attorney-General taking into account a number of factors including the nominal expiry dates of "continuing agreements".

[18] The CFMEU further submitted that the obligations of procedural fairness should prevail over the Attorney-General's Request, contending that the CFMEU was entitled to a fair opportunity to prepare a case. The CFMEU relied on the decision in *Scott v Handley*.[1] Whilst *Scott v Handley* is authority for the proposition that the refusal of an application for an adjournment **may**, in some circumstances, involve a denial of procedural fairness, the factual circumstances in that case bear no resemblance to the factual circumstances confronting the Full Bench. The Full Bench is faced with a legislative enactment (when read with the Attorney-General's Request) that requires the Full Bench to make a modern award for the Local Government sector no later than 30 September 2014. The decision in *Scott v Handley* is clearly distinguishable from the facts and circumstances existing in these matters.

[19] When considering the procedural fairness submission it is also relevant to note that the CFMEU's application to adjourn/vacate the hearing of the making of an award for the Local Government sector was opposed by the LGAQ and no other Objector supported the CFMEU's application.

[20] The remainder of the Objectors have, since directions were issued for the further conduct of these matters, provided detailed and comprehensive submissions and affidavits in support of their objections: see Exhibits 2 to 9 and Identified Documents F to ZA. We acknowledge that the timeframes for the making of a modern award in the sector are relatively short. We do not, however, accept the submission of the CFMEU that the Commission can ignore the provisions of s 140CC(1) of the Act (including the Attorney-General's Request and Variations). Further, we reject the CFMEU's submission that s 140C(2)(b) of the Act enables the Full Bench to make a modern award in the Local Government sector at a time after 1 October 2014 but before 31 December 2015.

[21] It is to be noted that, at the Mention of these matters on 17 September 2014, the CFMEU announced an appearance through another industrial organisation of employees, United Voice. The CFMEU filed no affidavits in the proceedings and no written submissions, other than a "one liner" saying it supported and adopted the written submissions of the AMWU, the ETU and the PGEU. An appearance was entered by Mr O'Brien for the CFMEU at the hearing on 20 or 21 September 2014 however he did not seek to address the Full Bench on any matter whatsoever. Unlike other industrial organisations of employees who put considerable time and effort into preparing for the hearing of these applications, the CFMEU did not appear to put any effort whatsoever into representing the interests of its members in the Local Government sector.

Legislation - Modernisation of Awards

[22] Under Chapter 2A Part 3 of the Act:

- a modern industrial instrument (including a modern award) must only include provisions that are required or permitted under s 71LA of the Act;

[1] *Scott v Handley* [1999] FCA 404 at [29] and [30].

- a modern industrial instrument (including a modern award) must not include non-allowable provisions as outlined in s.71LB;

- the required content of a modern industrial instrument (including a modern award) is specified in ss 71M to 71MC;

- permitted content of a modern industrial instrument (including a modern award) is specified in ss 71N to 71ND; and

- the non-allowable content for a modern industrial instrument (including a modern award) is specified in ss 71O to 71OK.

[23] In modernising awards, the Commission is required by s 140D(1) to provide a minimum safety net of employment conditions that is fair and relevant. Section 140D(2) then provides for those matters that the Commission must have regard to in exercising this jurisdiction.

[24] Subsections 140D(1) and (2) of the Act provide:

> "(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."

[25] Otherwise the provisions of Chapter 5A Part 1 and 2 of the Act set out the requirements for the modernisation of awards.

Brief Outline of Local Government Sector

[26] The LGAQ relied upon an Affidavit of Shaun Blaney (Exhibit 7) which outlined some detail about the industrial arrangements in the Local Government sector. The following evidence of Mr Blaney was based on a survey conducted by the LGAQ in in 2013:

- the Local Government sector is currently comprised of seventy-six (76) local government employers. With the addition of four new de-amalgamated local government employers there will be eighty (80) such employers. These local governments are affected by the making of a modern award for the sector;

- these local governments employ approximately 32,771 employees;

- approximately 30 different pre-modernised awards apply to these employees. The Full Bench has only been able to identify twenty (20) such awards (including two modernised awards of the Fair Work Commission) and these have been identified in the proceedings as AA to TT;

- approximately 29,849 of the 32,771 employees are presently covered by the *Queensland Local Government Officers' Award 1998* and the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003* i.e. approximately 91% of employees were covered by these two awards;

- the employees in sixty-one (61) of the local governments (including four recently de-amalgamated local governments) are currently covered by pre-award modernised certified agreements;

- nineteen (19) local governments do not have pre-award modernised certified agreements; and

- these local governments provide a diverse range of services and operations including road maintenance and building, civil construction, building and

construction code enforcement, local laws creation and enforcement, environmental and health management, economic development management, water and sewerage services, pest, vector control and lands protection services, animal welfare and control, aged care and child care, immunisation services, rubbish collection and waste management, libraries, civic centres, tourist information centres, health and fitness centres and aquatic facilities, administration, disaster management, operation of community morgues, operation of cemeteries, parks and gardens maintenance and operation of airports and aerodromes.

Exposure Draft of Modern Award

[27] There were no objections to eight clauses of the Modern Award Exposure Draft No. 2 (Exposure Draft), and the Full Bench is satisfied that those clauses should be included in the modern award i.e.

- clause 1 - Title
- clause 5 - Queensland Employment Standards and the Award
- clause 7 - Consultation
- clause 14 - Superannuation
- clause 21 - Parental Leave
- clause 24 - Jury Service
- clause 27 - Service Leave
- clause 30 - Patient Escort
- clause 34 - Employees required to report directly to the job site.

Two Preliminary Issues

[28] Whilst the Exposure Draft envisaged a Schedule identifying certain transitional arrangements, such as the date when the modern award would apply to each local government, the Full Bench advised the Objectors at a hearing on 17 September 2014 that it would not include such a Schedule in the modern award. This is because of the difficulties in requiring amendments to the award as and when the modern award has application to a particular local government. The Full Bench, however, did indicate that the Industrial Registry would keep a record (such as that envisaged in Schedule 6 of the Exposure Draft) of the dates as and when the modern award applies to each of the local governments. This document will be available to both employers and employees in the Local Government sector via the Commission's website.

[29] The Full Bench also received a submission from Northern SEQ Distributor-Retailer Authority (Unitywater) - a non-local government - seeking a specific exemption from the proposed modern award in anticipation of a specific industry modern award being created for the water industry. The Full Bench indicated that any modern award it would make in these proceeding would be subject to s 824 of the Act. Section 824 provides as follows:

"**824 Modern award does not apply to employee covered by continuing agreement or determination**

(1) A modern award does not apply to an employee, or to an employer or employee organisation in relation to the employee, at any time when the employee is covered by a continuing agreement or determination.

(2) In this section -

continuing agreement or determination means either of the following to which section 826 applies -

(a) a certified agreement;

(b) an arbitration determination under chapter 6."

[30] Because this modern award will have no application to Unitywater, the Full Bench will not make any exemption clause in respect of Unitywater. The existing industrial arrangements under which Unitywater operates will continue to exist as at 1 October 2014.

Arbitrated Clauses of the Proposed Modern Award

[31] The Full Bench provided the Objectors (late on 17 September 2014) with drafts of thirty-one (31) clauses of a proposed modern award where it had formed a preliminary view based on the following:

- all written submissions filed by the Objectors which are marked as identified documents F to ZA in the proceedings ;
- the Affidavits of evidence filed by the Objectors which are marked Exhibits 2 to 9 in the proceedings;
- the existing awards in the Local Government sector which are marked as identified documents AA to TT in the proceedings; and
- the material supplied to the Objectors by the AMOD Team during the period February to September 2014 and which are marked as identified documents B to E in the proceedings.

[32] Revised versions of the Full Bench's preliminary views on all thirty-four (34) clauses (not including the Schedules) were circulated to the Objectors on 19 September 2014. These preliminary views were also based on the abovementioned Exhibits and identified documents. The provision to the Objectors of the preliminary views of the Full Bench was to enable the Objectors, at the hearing on 20 and 21 September 2014, to address their concerns about those preliminary views. In this decision we intend to deal with thirty (30) of those clauses in the first instance. The position of the Full Bench on the remaining clauses will then be addressed, i.e.:

- Clause 9 - Types of Employment;
- Clause 12 - Classifications and minimum wage and salary levels;
- Clause 13 - Allowances; and
- Clause 15 - Hours of Work.

[33] **Clause 1 - Title:** There was no objection to the Exposure Draft proposal and the title has been accepted by the Full Bench.

[34] **Clause 2 - Operation and Transitional Arrangements:** The Full Bench has decided the following in respect of Clause 2 of the Exposure Draft:

(a) to amend Clause 2(a) of the Exposure Draft to remove any reference to Schedule 6.

(b) to accept the LGAQ's proposal that clauses, other than clause 1 and clause 2 of the Award, not operate until 1 January 2015. There was no objection to this amendment;

(c) remove Clause 2(c) of the Exposure Draft given that there are now no transitional arrangements as envisaged by the clause in the proposed award;

(d) not to accept the AWU's proposal to delete the Exposure Draft Clause 2(b). The AWU submits that any new additional monetary benefit should be paid to employees and not absorbed into overaward payments. A provision similar to that in the Exposure Draft is contained in federal modernised awards. and the Full Bench is of the view that the Exposure Draft Clause 2(b) should be retained although it is renumbered; and

(e) otherwise to accept the provisions contained in Clause 2 of the Exposure Draft.

[35] **Clause 3 - Definitions and interpretation:** The Full Bench has decided the following in respect to Clause 3 of the Exposure Draft:

(a) to insert a definition of "afternoon shift" such that it means a shift finishing after 1800 and at or before 2400. This definition is consistent with the provision in Clause 15(d) of the Exposure Draft;

(b) to insert a definition of "night shift" such that it means a shift finishing after 2400 and at or before 0800. This definition is also consistent with the provision in Clause 15(d) of the Exposure Draft;

(c) to insert a definition of "double rates" to mean "twice the applicable rate which would otherwise apply". The LGAQ has sought the inclusion of a "double rates" definition and referred the Full Bench to a decision of President Hanger in *Electrical Engineering Award* - State (1963).[2] As a result the Full Bench agreed to insert the above definition;

[2] *Electrical Engineering Award - State* (1963) 54 QGIG 423.

(d) to include a definition of "nursing employee" to mean a registered nurse, an enrolled nurse or an assistant in nursing. This is to clarify the term where it appears in the body of the modern award;

(e) not to amend the definition of "shift work" as sought by the QSU as we are of the view that the Exposure Draft proposal adequately deals with the issue;

(f) not to include a definition of "salaried officer" as sought by the QSU as we are of the view that it is not necessary or desirable;

(g) not to accept the proposals of the LGAQ in respect of "afternoon shift", "day work", "night shift", "shift work", "shift worker" or "working year" as the terms contained in the Exposure Draft appear to be more appropriate;

(h) not to accept the LGAQ's proposal to insert a definition of "existing employee" which would exclude many current employees (casual employees and any employee accepting a new position or being promoted to a new position after the commencement of the modern award). The Full Bench does not accept the LGAQ's proposal which is said to be needed if the Full Bench accepts the LGAQ's proposed Schedules B and C to the modern award. The Full Bench's view on the LGAQ's proposed Schedules B and C are dealt with later in this decision; and

(i) otherwise to accept the provisions contained in Clause 3 of the Exposure Draft.

[36] **Clause 4 - Coverage:** The Full Bench has decided the following in respect of Clause 4 of the Exposure Draft:

(a) to accept the QSU's proposal to insert the term "senior" before "officer" where the term appears in Clause 4.2(c); and

(b) otherwise to accept the provisions contained in Clause 4 of the Exposure Draft.

[37] **Clause 5 - Queensland Employment Standards:** There was no objection to the Exposure Draft proposal and the Full Bench accepts that proposal other than to amend slightly the name of the clause.

[38] **Clause 6 - Individual Flexibility Arrangements and Facilitative Award Provisions:** The Full Bench has decided the following in respect of Clause 6 of the Exposure Draft:

(a) to accept the LGAQ's proposal in respect of clause 6.2(b) that employees can be represented by persons other than union delegates and union officials. Whilst we have not accepted the LGAQ's proposal that the sub-clause should only read "employees may be represented" we have amended the Exposure Draft clause to read "[e]mployees may be represented by their local union delegate/s, their union official/s or any other person authorised to represent them";

(b) not to accept the LGAQ's proposal for an additional Clause 6.2(f). Such a provision is not currently available in the Local Government sector and, in the Full Bench's view, the award modernisation process is not the process to introduce such a provision; and

(c) otherwise to accept the provisions contained in Clause 6 of the Exposure Draft.

[39] **Clause 7 - Consultation:** There was no objection to the Exposure Draft proposal and the Full Bench accepts that proposal.

[40] **Clause 8 - Dispute Resolution:** The Full Bench has decided the following in respect of Clause 8 of the Exposure Draft:

(a) to accept the proposal by the LGAQ to delete the proposed Clause 8.2(f) and in lieu thereof insert two new paragraphs. The deletion and the insertion of a new Clause 8.2(f) and (g) is consistent with similar provisions in Clause 8.1(f) and (g). There was no objection to Clause 8.1(f) and (g) and it would seem appropriate to retain consistent provisions. We do however note the objection by the QNU;

(b) to renumber the remainder of the paragraphs in Clause 8.2; and

(c) otherwise to accept the provisions contained in Clause 8 of the Exposure Draft.

[41] **Clause 10 - Termination of Employment:** The Full Bench has decided the following in respect to Clause 10 of the Exposure Draft:

(a) not to accept the LGAQ's proposal with respect to Clause 10.2(a) which would require all employees to give the same notice as an employer is required to give to terminate employment. The LGAQ argues that a separate notice period should be removed and that all local government employees should be required to give the same notice as the employer. Currently, those persons employed pursuant to the *Local Government Employees (Excluding Brisbane City Council) Award - State 2003* and other blue collar awards are only required to give one week's notice when terminating their employment. The Full Bench does not see any administrative difficulty in retaining that provision and Clause 10.2(a) in the Exposure Draft is accepted;

(b) to accept the AWU's proposal to increase the wage level specified in the Exposure Draft proposal in Clause 10.2(a) and (b) from wage level 6 to wage level 9 i.e. the current wage level whereby employees are only required to give one week's notice on termination; and

(c) otherwise to accept the provisions contained in Clause 10 of the Exposure Draft.

[42] **Clause 11 - Redundancy:** The Full Bench has decided the following in respect of Clause 11 of the Exposure Draft:

(a) not to accept the proposal from the LGAQ to remove the proposed Clause 11.3. This clause reflects the provisions in the *Termination, Change and Redundancy Clause Statement of Policy* issued by a Full Bench of this Commission in 1984 and confirmed by a Full Bench in 2003.[3] The Full Bench sees no basis for removing that provision in the award modernisation process; and

(b) otherwise to accept the provisions contained in Clause 11 of the Exposure Draft.

[43] **Clause 14 - Superannuation:** There was no objection to the Exposure Draft proposal of Clause 14 and the Full Bench accepts that proposal.

[44] **Clause 16 - Meal Breaks:** The Full Bench has decided the following in respect of Clause 16 of the Exposure Draft:

(a) to accept the LGAQ proposal and insert the words "full-time" in Clause 16(a) and include the words "at times convenient to maintain the continuity of work" at the end of that Clause;

(b) not to accept the LGAQ's proposal to insert after the words "shift workers" in Clause 16(i) the words "working a continuous or non-continuous shift arrangement". The definitions of "shift worker" and "shift work" in Clause 3 of the proposed award provides that "shift workers" work as part of a non-continuous shift system or a continuous shift work system;

(c) to accept the LGAQ's proposal to amend Clause 16(c) to insert the words "timing and" before the word "duration"; and

(d) otherwise to accept the provisions contained in Clause 16 of the Exposure Draft.

[45] **Clause 17 - Rest Pauses:** The Full Bench has decided the following in respect of Clause 17 of the Exposure Draft:

(a) to accept the AMWU, ETU and PGEU's proposal to delete the words "[w]here practicable" from the commencement of the proposed Clause 17(a);

(b) to accept the LGAQ's proposal to include in the proposed Clause 17(a) the word "full-time" before the word "employee";

(c) to accept the LGAQ's proposal in respect of Clause 17(b) to delete from the Exposure Draft proposal the words "to be taken in the first part of the ordinary working day";

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[3] *Queensland Council of Unions and Or AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others* (2003) 173 QGIG 1417.

(d) to accept the LGAQ's proposal with respect to Clause 17(c) of the Exposure Draft proposal (i.e. rest pauses for part-time and casual employees). The Full Bench has, however, decided to provide for two clauses i.e. Clause 17(c) and Clause 17(d) rather than the one proposed by the LGAQ; and

(e) otherwise to accept the provisions contained in Clause 17 of the Exposure Draft.

[46] **Clause 18 - Overtime:** The Full Bench has decided the following in respect of Clause 18 of the Exposure Draft:

(a) not to accept the AMWU, ETU and PGEU's proposal to delete the number "2" and replace it with the number "3" in Clause 18.2(a) and (c) of the Exposure Draft. Members of these Objectors working in the Local Government sector currently get paid at the rate of time and one-half for the first 2 hours and double time thereafter. Under the Exposure Draft provision they would be required to work 3 hours of overtime before getting paid the double time rate. The great majority of employees in the Local Government sector currently work 3 hours of overtime before being entitled to the double time rate. It is thus appropriate, in all the circumstances, for the same provision to apply to all employees in the Local Government sector and, in that regard, the Exposure Draft proposal is accepted;

(b) not to accept the LGAQ's proposal to insert a new Clause 18.3(c) i.e. "in calculating double time prescribed by Clause 18.3(b), shift allowance shall not be included". We have already decided to include a definition of "double rates" in the modern award. The LGAQ submits that the clause should be amended to address compounding penalties and should make it clear that the shift allowance is not included in the calculation of double time. Further, the LGAQ argues that under the proposal, "shift workers" could include employees who have fixed hours and do not rotate and they would be entitled to the provisions of this clause. The Full Bench has formed the view that Clause 18.3(c) in the Exposure Draft is appropriate and reflects existing arrangements;

(c) not to accept the AWU's proposal to delete the Exposure Draft Clause 18.4 which provides for time off in lieu of overtime. The AWU's argument is that employees covered by the current *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003* do not have a time off in lieu of overtime provision. The AWU is concerned that employees may be pressured into accepting time off in lieu of overtime payments. The great majority of Local Government employees currently have the ability to opt for time off in lieu of overtime payments and the proposal provides that "subject to mutual agreement between the employer and an employee", employees may be granted time off in lieu of overtime payments. The Full Bench has no difficulty with the proposal being extended to those employees currently covered by the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003*;

(d) not to accept the LGAQ's proposal to replace the "wage level 17.1" in proposed Clause 18.4(a) with "wage level 6" of its classification structure. The Exposure Draft proposal has employees classified at wage level 17.1 (i.e. in receipt of a minimum weekly salary of $992.50 prior to the State Wage Case decision adjustment) or above not being entitled to payment for overtime but rather only entitled to time off in lieu of overtime. The LGAQ's proposal would appear to exclude those with a minimum weekly salary of $858.60 being excluded from an entitlement to payment of overtime. The Full Bench considers the Exposure Draft proposal to be appropriate in the circumstances and agrees that employees earning a weekly salary of anything less than $992.50 should be entitled to overtime payments and/or time off in lieu when they work such overtime;

(e) not to accept the AWU, AMWU, ETU and PGEU's proposal to amend Clause 18.5(a) (b) and (c) (the Recall to duty - other than from on call provision) by deleting the number "3" and inserting the number "4" on the basis that the *Engineering Award - State 2012* prescribes a minimum payment of 4 hours when recalled to duty. Once again, the majority of employees in the Local Government sector have a recall to duty minimum payment of 3 hours and the Full Bench is of the view that a common minimum recall to duty is appropriate in all the circumstances;

(f) not to accept the QSU's proposal to delete Clause 18.5(b) which requires employees recalled to perform duty to perform additional work of a breakdown or emergent nature if such arises during the course of the work the subject of the recall. The QSU's position is that this requirement is dealt with in the "unforeseen circumstances" reference in Clause 18.5(a). The Full Bench is of the view that the proposal in Clause 18.5(b) is not envisaged in the proposed Clause 18.5(a) and that (b) should thus remain in the modern award;

(g) to partly accept the LGAQ's proposal to insert a new Clause 18.5(f), i.e. that the minimum payment prescribed in Clause 18.5(a) shall not apply in respect of subsequent call-outs on the same day. The Full Bench has determined that subsequent recalls to duty on the one day deserve an additional minimum payment of 3 hours. Thus, the Full Bench has decided that an employee would be entitled to a maximum of six (6) hours of minimum callout payments on the one day;

(h) to accept the LGAQ's proposal to insert the word "reasonable" prior to the word "cost" in Clause 18.6;

(i) not to accept the AWU's proposal to delete the amount of "$40.00" in Clause 18.7(a)(iii) and (iv) and replace it with "8 hours pay". The AWU's submission is that the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003* currently prescribes 8 hours pay as the payment for being on call on a Sunday or a public holiday. The current clause results in a different payment for this disability depending upon the wage level received by the employee who is on call on a Sunday or public holiday. The Full Bench has formed the view that the payment of 8 hours pay for

being on call on a Sunday or public holiday is an excessive additional payment. The remainder of the Local Government employees currently receive the provisions as outlined in Clause 18.7(a)(iii) and (iv) of the Exposure Draft. Whilst we accept that the Exposure Draft proposal would result in a reduction in the money paid to AWU members when on call on a Sunday or public holiday, a clause requiring 8 hours pay is not a provision that we could insert into a modern award;

(j) not to accept the LGAQ's proposal to amend the title of Clause 18.7 to "On call allowance";

(k) not to accept the LGAQ's proposal with respect to the Exposure Draft Clause 18.8. The LGAQ seeks to have the 3 hours in Clause 18.8(a) paid for at the employee's "ordinary rate" rather than at the "prescribed overtime rate". The proposal in the Exposure Draft is the standard, and the Full Bench has decided that the award modernisation process is not the place to introduce a reduction in the rate for all employees covered by the proposed award;

(l) to partly accept the LGAQ's proposal to insert a new sub-clause whereby the minimum payment in Clause 18.8(a) shall not apply in respect of subsequent call outs on the same day. This is similar to the LGAQ's proposal with respect to Clause 18.5. The Full Bench has already agreed to an amendment to Clause 18.5 and to be consistent, a similar amendment should also be made to Clause 18.8, i.e. there shall be a maximum of six hours per day of the minimum payment;

(m) to accept the LGAQ's proposal for a definition of "double rates" which has been included in Clause 3 of the modern award;

(n) to accept the AMWU, ETU and PGEU's proposal to vary the term "clause 16" in Clause 18.10 to "clause 13(k)". This was an obvious drafting error in the Exposure Draft;

(o) not to accept the LGAQ's proposal to remove Clause 18.10 (Meal breaks on overtime) as the provisions have been referred to elsewhere in the proposed modern award. Whilst the Full Bench accepts that the provision is dealt with under the proposed Clause 16 (Meal Breaks) we can see no reason why it cannot also be included under Clause 18 (Overtime) as it relates to meal breaks whilst on overtime. We do, however, accept that the reference in 18.10(b) to Clause 16 should be a reference to Clause 16(d); and

(p) otherwise to accept the provisions in the proposed Clause 18 of the Exposure Draft.

[47] **Clause 19 - Annual Leave:** The Full Bench has decided the following in respect of Clause 19 of the Exposure Draft:

(a) to accept the QNU's proposal for an additional week of annual leave for nursing employees. This has been dealt with in Schedule 5 of the modern award rather than in the Annual Leave clause. The existing annual leave

provision for all nurses not working a continuous shift roster is 5 weeks. The Full Bench is not prepared to alter that provision when a modern award for nursing employees in Queensland Health has yet to be finalised;

(b) in relation to the QSU's proposal for an additional week of leave for salaried officers in certain divisions or districts in Queensland, the Full Bench has indicated that it will enable the QSU to make an application to the Commission prior to 30 November 2014 to have this additional week of leave for salaried officers arbitrated. We therefore continue the operation of the provisions of Clause 23.1.2 of the *Queensland Local Government Officers' Award 1998 (Transitional)* and Clause 20.1.2 of the *Municipal Officers' Award (Aboriginal and Islander Community Councils) Award 2004* until 31 March 2015. Should an application be filed in the Industrial Registry prior to 30 November 2014, the Commission will hear and determine such an application by 10 March 2015. The QSU has submitted that the additional week of leave is relied upon by employees in regional and remote areas to enable them to access leave and travel. The Full Bench has indicated that there may be some basis for the granting of the additional leave in some regional areas but that the Commission would need to hear evidence in support of such an additional leave entitlement. Whilst the QSU submits that this entitlement has existed for salaried officers since 1959, the Full Bench did indicate that the factors affecting travel within Queensland have changed markedly since 1959;

(c) not to accept the LGAQ's proposal to insert in Clause 19.1(a) and (b) the words "performing continuous or non-continuous shift arrangements" after the words "shift worker". We have not accepted such a submission earlier in this decision;

(d) to partly accept the LGAQ's proposal to enable more than one close down in a twelve (12) month period. We have agreed to allow a potential second close down in a 12 month period where the local government obtains the agreement of a majority of the employees affected by the proposed close down. The affected employees will need to agree to the second close down and to the duration;

(e) to extend the notice period in Clause 19.2(a) to 90 days;

(f) not to accept the AWU's proposal for all employees to be able to take accumulated time off/rostered days off rather than limiting that provision to employees who are not then qualified for sufficient annual leave to cover the period of the close down;

(g) not to accept the QSU's proposal which is based on Clause 23.10 of the *Queensland Local Government Officers' Award 1998 (Transitional)*. This provision places restrictions on the first time an officer participates in a close down, i.e. that the officer proceed on leave only for that period where the officer has accrued leave at the time of the commencement of the close down. The QSU also seeks a period of notice of six months in respect of a close

down and the Full Bench has formed the view that 90 days' notice is sufficient in the circumstances; and

(h) otherwise to accept the provisions in the proposed Clause 19 of the Exposure Draft.

[48] **Clause 20 - Personal Leave:** The Full Bench has decided the following in respect of Clause 20 of the Exposure Draft:

(a) not to accept the proposal from QSU and APESMA in lieu of the Exposure Draft Clause 20(c). QSU and APESMA object to the Exposure Draft proposal as it reduces the entitlements currently enjoyed under the *Queensland Local Government Officers' Award 1998 (Transitional)* from 15 days personal leave per year to 10 days per year. The Exposure Draft proposal is to reduce the entitlement of 15 days leave on full pay per annum to 10 days per annum over a period from 1 January 2015 to 1 January 2020. The current QES is 10 days per annum of personal leave. Existing employees covered by the *Queensland Local Government Officers' Award 1998 (Transitional)* will continue to have available to them any accrued personal leave as and when the modern award becomes applicable to the particular Local Government. It should also be noted that salaried officers of local governments (not including Queensland) have had this entitlement reduced to 10 days as a result of the modernisation of the applicable federal award;

(b) not to accept the QSU's proposal whereby an arrangement that has existed in the Local Government sector for maintenance of accumulated personal leave to follow employees in the local government industry should be maintained, i.e. if a salaried officer accepts employment in another Local Government the officer takes with them their entitlement to personal leave. This appears to have been an arrangement that has been developed within the Local Government sector in Queensland. The Full Bench is of the view that it is not a matter for insertion into a modern award, although we would support the continuation of such an arrangement within the sector;

(c) not to accept the QSU's proposal that employees should retain the right to access all accrued personal leave for the purposes of caring responsibilities which the QSU submits would be consistent with the Commission's award modernisation function in s. 140BB(2)(f) and (g) of the Act. Section 71FC of the Act provides that an employee may use up to 10 days of sick leave in each year to care for and support members of the employee's immediate family or household. A distinction needs thus to be made between an accumulation of personal leave prior to the commencement of the modern award and the position once the modern award has application. It is the Full Bench's view that any accumulation of personal leave can be used for the purposes of caring responsibilities prior to the commencement of the modern award for a particular local government. However, once the modern award applies, employees would only be entitled to use 10 days of personal leave in each year as carer's leave;

(d) not to accept the LGAQ's proposal that Clause 20(c) be deleted as the proposed award should reflect the QES entitlement. This would reduce an entitlement for the majority of employees to be covered by the modern award immediately. The Full Bench prefers the graduated reduction outlined in Clause 20(c) of the Exposure Draft; and

(e) otherwise to accept the provisions in the proposed Clause 20 of the Exposure Draft.

[49] **Clause 21 - Parental Leave:** There was no objection to the Exposure Draft proposal of Clause 21 and the Full Bench accepts that proposal.

[50] **Clause 22 - Long Service Leave:** The Full Bench has decided the following in respect of Clause 22 of the Exposure Draft:

(a) not to accept the AMWU, ETU and PGEU's proposal to include a new Clause 22(b) to provide for the portability of long service leave that is currently provided for in Division 2 of the *Local Government Regulation 2012*. This entitlement is one provided for in the *Local Government Regulation 2012* and is not an entitlement under the Act. The Full Bench does not see the need to incorporate an entitlement under another piece of legislation into a modern award of this Commission;

(b) not to accept the LGAQ's proposal that Clause 22 of the Exposure Draft be deleted as the modern award should reflect the QES entitlement. Clause 22(a) of the Exposure Draft stipulates that Clause 22(b) supplements the QES. The Full Bench is of the view that employees in the administrative, technical, community service, supervisor and managerial (other than Indigenous Councils) group in the General stream and teachers and their assistants in the Children's services and early childhood education stream delivering an early childhood education program should continue to be entitled to the additional long service leave;

(c) otherwise accepts the provisions in the proposed Clause 22 of the Exposure Draft.

[51] **Clause 23 - Public Holidays:** The Full Bench has decided the following in respect of Clause 23 of the Exposure Draft:

(a) given the Full Bench's stated view about hours of work it has amended the Exposure Draft Clause 23.4 to reflect that an "additional day's wage" or "a day's holiday in lieu" means one fifth of the ordinary weekly hours paid at the ordinary hourly rate;

(b) not to accept the LGAQ's proposal to delete Clause 23.1(a)(i) . The LGAQ contends that the Clause does not supplement the QES but merely reflects the position under the QES where an employee is ordinarily required to work on a public holiday but does not work. The Full Bench is of the view that the clause provides clarity and should remain;

(c) not to accept the LGAQ's proposal to combine Clause 23(1)(a)(ii) with Clause 23.1(c). The Full Bench does not have a problem with either Clause 23(1)(a)(ii) or Clause 23.1(c) as they exist in the Exposure Draft;

(d) not to accept the LGAQ's proposal in respect of Clause 23.2(a) of the Exposure Draft. The LGAQ proposes that the words "in which case work performed on the public holiday shall not be subject to the public holiday penalties under sub-clauses 23.1(a) or (b)" be added at the end of Clause 23.2(a). The Full Bench is of the view that the heading to Clause 23.2 (i.e. Substitution) reflects the true position i.e. that an employee is not entitled to both payment and a day off in lieu;

(e) to accept the LGAQ's proposal to insert an additional sub-clause (b) to Clause 23.3 i.e. the payment for each public holiday or the taking of a substituted day's leave to be equivalent to one fifth of the employee's ordinary weekly hours paid at the ordinary hourly rate. This is a similar provision to Clause 23.4(c); and

(f) otherwise to accept the provisions in the proposed Clause 23 of the Exposure Draft.

[52] **Clause 24 - Jury Service:** There was no objection to the Exposure Draft proposal of Clause 24 and the Full Bench accepts that proposal.

[53] **Clause 25 - Professional Development and Study Leave:** The Full Bench has decided the following in respect of Clause 25 of the Exposure Draft:

(a) not to accept the LGAQ's proposal that Clause 25(a) should be deleted as it does not provide an entitlement or impose an obligation and that it is not necessary for a modernised minimum rate award. The Full Bench acknowledges that the term "may" does not provide an entitlement to any employee, but accepts that professional development and study leave for employees should be encouraged. It is on that basis that the Full Bench has agreed to the inclusion of Clause 25(a) in the proposed award;

(b) not to accept the QSU's proposal for a replacement for Clause 25; and

(c) otherwise to accept the provisions in the proposed Clause 25 of the Exposure Draft.

[54] **Clause 26 - Conference Leave:** The Full Bench has decided the following in respect of Clause 26 of the Exposure Draft:

(a) not to accept the LGAQ's proposal to delete Clause 26 of the Exposure Draft on the basis that it does not clearly provide an entitlement or impose an obligation and is not necessary for a modernised minimum rate award. The Full Bench accepts that the clause only requires that an employee "may be granted" leave without loss of salary or annual leave to attend approved seminars or annual conferences by a recognised institute or other body deemed relevant. The encouragement of employees to further their body of

knowledge or enhance their skills by attending seminars or conferences is something that should not be discouraged. On that basis the Full Bench has decided to retain the clause as outlined in the Exposure Draft.

[55] **Clause 27 - Service Leave:** Whilst there was no objection to the Exposure Draft Clause, the Full Bench formed the view that the Exposure Draft clause may be contrary to legislation governing leave to attend camps, courses or schools of Her Majesty's Naval, Military or Air Forces. In that regard the Full Bench has amended the Exposure Draft proposal to conform with relevant legislation.

[56] **Clause 28 - Transfer and Appointment Expenses:** The Full Bench has decided the following in respect of Clause 28 of the Exposure Draft:

(a) to redraft the Exposure Draft Clause 28 to deal with the QSU's objections to the Exposure Draft proposal;

(b) to accept the LGAQ's proposal to insert the word "temporary" at the commencement of Clause 28(b)(ii); and

(c) otherwise to accept the provisions in the proposed Clause 29 of the Exposure Draft.

[57] **Clause 29 - Travelling and Relieving Expenses:** The Full Bench has decided the following in respect of Clause 29 of the Exposure Draft:

(a) not to accept the LGAQ's proposal to delete "actual and reasonable expenses" and to replace the phrase with "the reasonable costs";

(b) to add Clause 29(b) to the Exposure Draft to provide that "[a]n employee undertaking travel in accordance with Clause 29(a) shall be entitled to be paid at their ordinary rate, to a maximum of 8 hours on any one day" in response to a QSU proposal seeking travelling time; and

(c) otherwise to accept the provisions in the proposed Clause 29 of the Exposure Draft.

[58] **Clause 30 - Patient Escort:** There was no objection to the Exposure Draft proposal of Clause 30 and the Full Bench accepts that proposal.

[59] **Clause 31 - Camps:** The Full Bench has decided the following in respect of Clause 31 of the Exposure Draft:

(a) not to accept the TWU's proposal to delete the words "reasonable and sufficient standards" with the phrase "in accordance with the provisions of a Schedule". The TWU submits that the Schedule should contain the existing provisions in Clauses 10.1 and 10.2 of the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003*. The Full Bench has determined that the existing provisions of Clauses 10.1 and 10.2 of the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003* shall be the minimum standard of living for camp accommodation.

Should a Local Government seek to provide camp accommodation at a lesser rate than that currently contained in Clauses 10.1 and 10.2 of the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003* (Exhibit 10 in the proceedings) then the matter should be referred to the Commission under Clause 8 of the modern award for conciliation and/or arbitration;

(b) to accept the TWU's proposal to include a clause relating to travelling time. The additional Clause 31(b) will provide that "[a]n employee undertaking travel to camp in accordance with Clause 31(a) shall be entitled to be paid at their ordinary hourly rate, to a maximum of 8 hours on any one day"; and

(c) otherwise to accept the provisions in the proposed Clause 31 of the Exposure Draft.

[60] **Clause 32 - Equipment and Instruments:** The Full Bench has decided the following in respect of Clause 32 of the Exposure Draft:

(a) to amend the name of Clause 32 to "Equipment and Instruments" rather than the Exposure Draft title of "Tools and Instruments" so as to be consistent with the terms of the clause itself;

(b) to accept the LGAQ's proposal to insert the words "other than those for which a tool allowance is paid pursuant to clause 13(k)" so that reimbursement is not required where the tool allowance has been paid;

(c) not to accept the AMWU, ETU and PGEU's proposal based on the current provisions of the *Engineering Award - State 2012*;

(d) to insert the term "where practicable" in both Clauses 32(c) and (d); and

(e) otherwise to accept the provisions in the proposed Clause 32 of the Exposure Draft.

[61] **Clause 33 - Employees required to report to a depot:** The Full Bench has decided the following in respect of Clause 33 of the Exposure Draft:

(a) to accept the agreed changes to Clause 33 in the Exposure Draft, i.e. Clause 33(a) will now provide "[w]here an employer requires an employee to report to the usual depot and then travel to a job site located within 5 km of the depot, and the employee chooses to use their own vehicle to undertake such travel, the employee will not be paid the allowance prescribed in clause 13(i)"; and

(b) otherwise to accept the provisions in the proposed Clause 33 of the Exposure Draft.

[62] **Clause 34 - Employees required to report directly to the job site:** There was no objection to the Exposure Draft proposal of Clause 34 and the Full Bench accepts that proposal.

[63] Whilst considerable argument was advanced by the Objectors in respect of the abovementioned provisions of the Exposure Draft, the written and oral submissions on Clauses 9, 12, 13 and 15 were considerably more extensive. Those award provisions are thus dealt with separately.

[64] **Clause 9 - Types of Employment:** The Full Bench's preliminary view on this clause was forwarded to all Objectors on Friday 19 September 2014.

[65] The QSU raises an objection in relation to Clause 9.1 (Full-time employment) on the basis that it would increase the hours of work for the majority of employees who are to be covered by the modern award from 36.25 hours per week to 38 hours per week. The Full Bench accepts that Clause 9.1 of the Exposure Draft would constitute a significant departure from the current arrangements in which full-time work is defined as 36.25 hours per week. It is submitted to the Full Bench that currently more than 18,184 employees are entitled to 36.25 hours per week as their standard hours of work. The Full Bench also notes that this provision has existed since 1974.

[66] The argument advanced by the LGAQ is that the standard hours of a full-time employee in the Local Government sector should be 38 hours per week. LGAQ further submit that, by means of transitional provisions, all existing employees working 36.25 hours per week or 37.5 hours per week will have their conditions preserved. In support of this submission, the LGAQ refers to the *Local Government Industry Award 2010* (Federal Modern Award), which prescribes 38 hours per week as the standard hours of a full-time employee.

[67] The Objectors do not agree on the hours to be worked. The Full Bench does not accept that the standard hours for all full-time employees in the Local Government sector should be 38 hours per week. Nor do we accept that, as a consequence of a 38 hour week, workers who were originally classified as full-time employees will be deemed to part-time employees.[4] The Full Bench rejects the LGAQ's submission in that regard, and we do not support the proposed Clause 9.1 of the Exposure Draft. In those circumstances, we are of the view that Clause 9.1 of the Exposure Draft should be amended.

[68] Accordingly, the Full Bench has decided to delete Clause 9.1 of the Exposure Draft proposal and insert the following new Clause 9.1:

> "A full-time employee is one who is engaged to work an average of 36.25, 37.5 or 38 hours per week as prescribed in clause 15 of this award."

[69] The AWU objects to Clause 9.2 on the basis that it would remove the minimum hours that part-time employees can work as provided for in the *Local Government Employees Award - State 2003*. The AWU submits that an engagement of less than 10 hours per week would be of limited value to an employee who wants to be engaged in paid employment. In order to address this reduction in the minimum hours of work, the AWU proposes that Clause 9.2(a) should be amended by deleting the existing sub-clause (i) and inserting a new sub-clause (i) in the following terms:

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[4] See cl 9.2.

> "(i) is engaged to work a regular pattern of ordinary hours each week or fortnight that are less than the ordinary hours worked by an equivalent full-time employee, with a minimum of ten hours per week;"

[70] United Voice also proposes an amendment to Clause 9.2 of the Exposure Draft because, in its view, the Exposure Draft is insufficient to provide for minimum normal and regular hours of work per week for part-time workers. In this regard, the Full Bench's attention is drawn to s 71N of the Act, which deals with types of engagement and arrangements for when work is performed including "hours of work" provisions.

[71] The Full Bench's attention is also drawn to the Federal Modern Award, which includes a provision for part-time workers whereby the regular pattern of work is agreed to in writing. United Voice submits that the provision dealing with the minimum normal and regular hours of work for part-time workers does not offend the non-allowable content provisions of the Act as it does not restrict the suite of engagement types or flexible rostering practices that are available to an employer.

[72] United Voice proposes that the following words should be inserted (with the concomitant deletion of certain words denoted by the "strike through" text) into Clause 9.2(a)(i):

> "… and for those engaged in the General stream (see clause 12.1(a)) will be employed for a minimum of 10 hours per week, except for those in the health, sports, fitness and tour guides group of the General stream (see clause 12.1(a)) who will be employed for a minimum of 16 hours per week, and whose hours ~~or fortnight that~~ …"

[73] Further, United Voice submits a new Clause 9.2(a)(iii) should be inserted as follows:

> "(iii) At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and where practicable the actual starting and finishing times each day."

[74] The LGAQ submits that the AWU and United Voice proposals are unnecessary. The LGAQ's submissions are premised on full-time employment being an average of 38 hours per week. However, in light of the view expressed by the Full Bench in regard to working hours, it is not necessary to deal with the LGAQ's submission in this regard.

[75] The LGAQ submits that elements of Clause 9.2 are unnecessary and should be deleted. This is argued in light of the LGAQ's submission regarding ordinary hours of work and transitional arrangements proposed by them for existing 36.25 and 37.5 hour employees under Clause 15.1 of the Exposure Draft. The Full Bench does not accept the LGAQ's submission. We have elsewhere in these reasons made our views known in relation to a change in working hours and our preferred classification methodology. It follows therefore, that we also do not accept the submissions of the LGAQ in regard to Clause 9.2 (b). We accept the deletion of the words "Subject to Clause 9.2(e)".

This amendment is consistent with the Full Bench's deletion of Clause 9.2(e) of the Exposure Draft

[76] The only amendment proposed to Clause 9.2 (c) is the insertion of the following words by the AWU:

> "Such arrangement should be entered into without duress, in writing and stipulate how additional hours are to be paid."

The Full Bench does not accept that proposed amendment.

[77] The AWU suggested the following amendment to Clause 9.2(d):

> "(d) ~~All time worked in excess of the agreed hours will be paid at the appropriate overtime rate.~~ Where a part-time employee is directed to work outside the spread of ordinary working hours or work additional hours in excess of the hours agreed under clause 9.2(a) or as varied under clause 9.2(c) such hours will be paid at the appropriate overtime rate."

[78] The LGAQ submitted that Clause 9.2(e) should be amended by the insertion of a new Clause 9.2(e) in the following terms:

> "(e) All time worked in excess of the agreed ordinary hours worked under sub-clause 9.2 (b) or as otherwise varied by agreement under sub-clause 9.2 (d), will be paid at the appropriate overtime rate."

[79] The Full Bench has considered the submissions of the AWU, in relation to Clause 9.2(d), and the LGAQ in relation to the insertion of the proposed Clause 9.2(e) and is not persuaded that the clause needs to be varied in either of the two manners proposed.

[80] As a consequence of our conclusion in relation to the ordinary hours of work, reflected in the new clause 9.1, the Full Bench has deleted Clause 9.2(e) from the modern award.

[81] In its submission, the LGAQ notes consequential amendments should be made to Clause 9.3(a) and (b) to reflect the LGAQ's proposal that full-time employment means a 38 hours per week employment and that transitional arrangements be included for existing employees who currently work 36.25 and 37.5 ordinary hours per week. However, in light of the Full Bench's view in relation to full-time employment and its decision not to amend the current working hours arrangements, it is not necessary to make the amendments proposed by the LGAQ.

[82] The Full Bench does accept that Clause 9.3(c) should be amended to delete the words "subject to clause 9.3(g)".

[83] The QSU proposes the following variation to Clause 9.3(d) of the Exposure Draft:

> "(i) employees in the Administrative, technical, community service, supervisory and managerial (other than Indigenous Councils) group of the general stream who are fulltime students and working as library assistants."

The QSU submits that it is "opposed to reducing the engagement for employees other than students. This award operates in relation to remote and regional areas where travel time can be significant and engagements of less than three hours can result in affected

employees consuming the payment to be received in travel time and associated cost". The Full Bench decided not to amend the Exposure Draft in this respect.

[84] The LGAQ submits that the table contained within Clause 9.3 requires amendment to include a new sub-clause (vii) for casual employees undertaking cleaning activities, caretakers or employees working at cemeteries to reflect the minimum two hour payment in clause 4.5.4 of the *Local Government Employees' (excluding Brisbane City Council) Award - State 2003*. The Full Bench accepts the submission of the LGAQ that clause 9.3(d) should be amended to insert the following:

> "(vii) employees undertaking cleaning activities, caretakers or employees working at cemeteries".

[85] As a consequence of our conclusion in relation to the ordinary hours of work, reflected in the new clause 9.1, the Full Bench has deleted Clause 9.3(g) from the modern award.

[86] The LGAQ's primary submission in relation to Clause 9.4 is that it should be deleted as it is not necessary in a minimum safety net award. However, the LGAQ submits that if the Full Bench is not minded to delete the clause, the LGAQ's alternative view is that the clause should be amended to clarify its application. The LGAQ argues that the inclusion of Clause 9.4:

(a) contradicts the QES and notice of termination provisions;

(b) provides benefits that are historical as part of the pre-modernised awards; and

(c) if necessary, can be achieved through s 140ED of the Act which if such contractual enhanced notice provisions were provided would be a matter for individual local councils and employees.

[87] It is further submitted by the LGAQ that a new Clause 9.4 (d) should be inserted to deal with circumstances where a maximum term employee's employment is terminated on the grounds of redundancy. The employer would be entitled to offset any payments made in lieu of notice under Clause 9.4(b)(v). A maximum-term employee is one who is engaged for a specific period of time or for a specific task. Under s 71KE of the Act, subdivision 2 does not apply to an employee employed for a fixed period.[5] An employee would therefore not be entitled to the benefits under subdivision 2. In light of the reasons above, the Full Bench does not accept the submissions of the LGAQ in relation to the insertion of a new Clause 9.4(d).

[88] There is no objection to Clause 9.5 (Probationary employment) of the Exposure Draft and the Full Bench has decided to insert it into the modern award without amendment.

[89] The AMWU, ETU, and PGEU submit that Clause 9.6 (Incidental and peripheral tasks) should be amended to include the following proviso:

> "…consistent with the classification structure of this award provided that such duties are not designed to promote deskilling".

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[5] S. 71KE (3) (c).

It was submitted that, whilst the corresponding provisions in the *Engineering Award - State 2012* and the *Building Trades Public Sector Award - State 2002* are substantially similar to the clause in the Exposure Draft, the *Engineering Award - State 2012* contains a safeguard provision which requires that any direction given by an employer must be consistent with the classification structure of the award and, further, that it must not be designed to promote deskilling. A number of examples were provided to illustrate the point that incidental and peripheral tasks have the potential to result in the deskilling of a worker. The Full Bench, whilst acknowledging the submissions of the AMWU, ETU, and PGEU, is of the view that, consistent with the object of promoting flexible modern work practices and the efficient and productive performance of work, Clause 9.6 should be inserted into the modern award without amendment.

[90] **Clause 12 - Classifications and minimum wage and salary levels:** Central to the operational efficacy of this modern award will be a clear articulation of who is covered by it, how those employees are to be classified, and what the minimum wage and salary levels will be for each category of employees. Consequently, Clause 12 is a fundamental component of the Exposure Draft.

[91] As will be readily apparent, the Full Bench is not undertaking the making of this modern award in a vacuum, nor is the award being composed on a blank page. Rather, the challenge is to make one award for some 32,771 employees, who together have a diverse range of occupations or callings, and each of whom is currently covered by one of approximately 18 pre-modernised awards.

[92] On 23 May 2014, a differently constituted Full Bench decided that there be one award for all local government employees.[6] That decision was consistent with the submission of the LGAQ. In reaching its decision, that Full Bench stated that various unions in their individual submissions contended either for three awards or not less than two (and there was some variation between the submissions about who should be covered by each of the separate awards).[7] Differences between the entitlements of different groups of employees (e.g. as to ordinary hours of work, personal leave, annual leave and long service leave) were noted. Then, as now, the unions were concerned about the potential for a reduction in the terms and conditions of employment of some groups of employees should a single award be made.[8] In ruling that there be one award, that Full Bench stated "[i]t will be a matter for the actual award making process to determine if, how, and to what extent, existing entitlements should be disturbed."[9]

[93] As a consequence of that decision, this Full Bench has to make a modern award that:

(a) is consistent with the objects of modern awards set out in ss 140BA and 140D of the Act;

(b) is prepared having regard to the requirements of s 140BB(2) and the Attorney-General's Request;

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6 *Re: Referral pursuant to s 140C(1) of the Industrial Relations Act 1999 for a modern award - Local Government* [2014] QIRC 089.
7 Ibid, [9]-[12].
8 Ibid, [20], [21].
9 Ibid, [25].

(c) accommodates the diverse conditions applying to those 32,771 employees in a practical and workable way; and

(d) so far as practicable, does not result in the reduction of the existing wage or salary level of any employee covered by the award.

[94] The Exposure Draft is the attempt by the AMOD Team to develop such a modern award and Clause 12 is at the heart of that proposed award. The draft clause attracted substantial opposition from the LGAQ, which proposes detailed alternatives to it. The key difference between the two proposals is the way in which employees would be classified and the rates of pay for the levels within each category. The LGAQ contends that the schemes are mutually exclusive. Indeed, as well as making submissions in support of the LGAQ proposal at the hearing, Mr Murdoch, Counsel for the LGAQ, stated that what is proposed in the Exposure Draft "is so broken it can't be fixed efficiently ". If the Full Bench were to adopt the proposed changes to Clause 12 submitted by the LGAQ there would be numerous consequential changes to other clauses of the Exposure Draft. Those changes were usefully set out in the LGAQ's written submissions.

[95] The QSU also made comprehensive submissions in relation to Clause 12. Some other opponents made narrower, more specific suggestions in relation to that clause. Before considering those submissions, it is appropriate to outline the key features of the draft clause.

[96] Clause 12.1 of the Exposure Draft provides that employees covered by the award are to be classified into one of three streams:

(a) General local government industry stream (the "General stream"), which has 12 specified groups;

(b) Children's services and early childhood education stream; and

(c) Nursing stream.

[97] Most of the employees to be covered by the award (approximately 32,681) would come within the General stream and would be in one of the following groups:

- Administrative, technical, community service, supervisory and managerial (Indigenous Councils) group
- Administrative, technical, community service, supervisory and managerial (other than Indigenous Councils) group
- Aged care (other than nursing) group
- Building trades group
- Clerical group
- Engineering and electrical/electronic group

- Health services officers group
- Health, sports and fitness group
- Hospitality group
- Operations group
- Theatrical group
- Tour guides group.

[98] Definitions and position descriptors for employees in each stream or group are listed in Schedules 3, 4 and 5 to the Exposure Draft respectively.

[99] Clauses 12.2 and 12.3 of the Exposure Draft provide, in relation to the General stream and the Children's services and early childhood education stream respectively, that:

(a) existing employees at the date of the application of the award to their employment would retain the classification which applied to them immediately prior to the commencement of the award and would be paid at the wage level assigned to that classification in the relevant Schedule; and

(b) employees who commence employment after the award starts to apply to their employer, would be classified into the appropriate classification having regard to the definitions and position descriptors in the relevant Schedule and would be paid at the wage level assigned to that classification in the relevant Schedule.

[100] Clause 12.4 of the Exposure Draft provides that, from the date of the operation of the award to their employment, all employees in the Nursing stream are to be classified into the appropriate classification and wage level as prescribed in Clause 12 and having regard to the definitions and position descriptors in the relevant Schedule.

[101] Clause 12.5 of the Exposure Draft provides that the minimum wages and salaries payable to employees in the General stream and the Children's services and early childhood education stream are prescribed in Schedules 1 and 2 respectively. It also sets out a consolidated version of the wage levels and applicable wage rates for all employees classified in the General stream and Children's services and early childhood education stream.

[102] In relation to the General stream (into which more than 99 per cent of employees would fall) and the Children's services and early childhood education stream (with relatively few employees), the Exposure Draft provides for broad banding to 21 wage levels within two years after the modern award commences to operate. At the date of commencement, there would be 2, 3 or 4 wage levels within each of the 21 proposed wage levels, giving a total of 68 wage levels at commencement. That number would reduce in stages in each of the following two years to 38 and 21 respectively. As a result, the number of wage

levels under the scheme contained in the Exposure Draft would be significantly lower than the approximately 200 individual wage rates in existence if the current wage structures were continued.

[103] For the Nursing stream, provision is made for the different levels for Registered Nurses (5 levels, 15 grades), Enrolled Nurses (2 levels, 4 grades) and Assistants in Nursing (3 levels, 5 grades).

[104] Clause 12.6 sets out how and when the council category used for executive salary purposes in the Administrative, technical, community service, supervisory and managerial (other than Indigenous Councils) group of the General stream shall be determined.

[105] Clause 12.7 provides for additional late work payments to people in the hospitality group of the General stream, and for Directors' allowances to be paid in specified circumstances to teachers in the Children's services and early childhood education stream.

[106] Clause 12.8 deals with when and how often wages and salaries are paid, how they are paid (electronic funds transfer, cash or cheque), and when termination payments must be made.

[107] Clause 12.9 provides that, as a general rule, the minimum wage rates payable to junior employees will be calculated as a percentage of the relevant minimum adult rate (depending on the age of the junior employee). However, junior employees engaged in specified occupations or work areas are to be paid the full adult rate.

[108] Clause 12.10 provides that, in certain circumstances, an employee in a specified group of the General stream may perform work for more than one employer and be paid in the way prescribed in that clause.

[109] Clause 12.11 provides for the payment of a person performing mixed functions, i.e. performing duties at a higher level than usual for more than 4 hours on a particular day.

[110] Clause 12.12 also deals with payment where an employee is instructed to perform higher duties for more than one day.

[111] The objections to this part of the Exposure Draft can be characterised as:

(a) objections to the proposed scheme generally; and

(b) objections to the substance or drafting of specific provisions.

[112] The LGAQ provided a detailed critique of draft Clause 12, stating that one of the most significant areas where it objects to the Exposure Draft is the approach to classification methodology and ascribing associated minimum rates of pay. The LGAQ submits that the approach taken to classification methodology suffers from significant structural problems, which also had consequences for other provisions within the Exposure Draft. In its submission:

(a) draft Clause 12 is not easy to understand or apply, creates uncertainty of application, and will not achieve stability or sustainability;

(b) the AMOD Team has not had regard to work value principles in fixing a minimum safety net of wages within the Exposure Draft; and

(c) services based increments are not consistent with minimum awards that must be a safety net.

[113] These points are expanded upon in some detail in the LGAQ's written submission which are to be read with the two affidavits of Shaun Blaney (Exhibits 7 and 8). It is unnecessary to do more in these reasons than to note some of the key features of the submissions. First, the LGAQ's documents illustrate in various ways (including by way of colour coded examples) where, in the LGAQ's submission, there are significant overlaps in the descriptors being used to inform the groups under Schedule 3. The LGAQ contends that such overlap:

(a) "causes major structural problems in relation to the ability to coherently apply various provisions throughout" the Exposure Draft; and

(b) gives rise to problems that are so significant that, "if not comprehensively dealt with, would result in the proposed Award offending the award modernisation objective of being simple to understand and apply".

[114] In particular, the LGAQ criticises the AMOD Team for extracting classification descriptors from the pre-modernisation *Queensland Local Government Officers' Award 1998* and *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003* and using those descriptors (with minor consolidation) to inform the scope of the Administrative, Technical, Community Service, Supervisory and Managerial (other than Indigenous Councils) group and the Operations group. In the LGAQ's submission, this is "highly problematic, as there is significant overlap with respect to the Local Government work these descriptors define". As a consequence, the LGAQ submits, there will be "unnecessary disputation, confusion and potentially unsustainable claims". The LGAQ expands on that submission by referring to the "highly problematic" application of those descriptors to various types of contemporary local government callings.

[115] Second, in relation to work value principles and the fixing of a minimum safety net of wages within the Exposure Draft, the LGAQ refers to:

(a) s 104BB(2)(e) of the Act which requires the Commission, when performing its award modernisation functions to have regard to "the need to promote the principle of equal remuneration for work of equal value";

(b) s 140D of the Act which requires the Commission, when exercising its Chapter 5A powers, to ensure that modern awards, together with the Queensland Employment Standards, "provide a minimum safety net of employment conditions that is fair and relevant"; and

(c) the statement in paragraph 8 of the Attorney-General's Request that, in "developing the content for modern awards, the Commission will have regard

to the safety net community standards operating in respect of similar work throughout Australia, including properly fixed minimum rates and allowances."

[116] The LGAQ submits that, in having regard to "properly fixed minimum rates" throughout Australia in setting a minimum safety net of wages in the Exposure Draft, the notion of equal remuneration for work of equal value and "properly fixed minimum rates" historically has been intrinsically linked, and remains a feature of modern awards nationally. The LGAQ relies on a passage from a decision of a Full Bench of the Australian Industrial Relations Commission (AIRC) concerning the proper fixing of minimum rates of pay in modern awards[10] to support its submission that the approach taken by the AMOD Team has been to "amalgamate and preserve, rather than reform and modernise" 17 different pre-modernisation award descriptors and their associated rates of pay. As evidence of its conclusion, the LGAQ refers to the Note to Clause 12.5 of the Exposure Draft, and cites examples of what it submits are anomalous different hourly rates which, if the Exposure Draft is adopted, would be paid to people in different groups doing equivalent work.

[117] Third, the LGAQ submits that, although service based increments were a feature of many pre-modernised local government awards nationally, the Full Bench of the AIRC in its decision on the *Local Government Industry Award - 2010* referred to "a tension between increments based exclusively on length of service and the concept of a modern award safety net and, generally speaking, such increments are not appropriate for inclusion in a modern award that must be a safety net."[11]

[118] The LGAQ also makes specific submissions seeking changes to the following sub-clauses:

(a) amendments to Clause 12.7 (Additional payments);

(b) amendments to Clause 12.8(a) (Payment of wages and salaries) to provide that wages are paid at least fortnightly, rather than weekly as provided in the Exposure Draft, and the deletion of paragraphs (b) and (c) on the basis that they are unnecessary;

(c) amendments to Clause 12.9 to align it with the LGAQ's proposed classification methodology;

(d) deletion of Clause 12.10 on the basis that a clause allowing a person to perform work for more than one employer should not be included in a minimum rates award;

(e) deletion of Clause 12.11 on the basis that this mixed functions clause is inconsistent with the higher duties provision in Clause 12.12;

(f) amendments to Clause 12.12 to clarify the degree to which an employee is performing duties of another employee; and

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[10] *Award Modernisation - Decision - Full Bench* [2009] AIRCFB 345, [43].

[11] *Award Modernisation - Decision re Stage 4 Modern Awards* [2009] AIRCFB 945, [140]

(g) the removal of the additional matters referred to in the notation at the end of Clause 12 because they will not be required in light of the amendments proposed by the LGAQ.

[119] The alternative scheme proposed by the LGAQ provides for an award structure of skill-based classifications defined according to specified skill descriptors. Various positions may also require employees to hold and maintain appropriate licenses, certificates and/or tickets for the operation of machinery, plant and/or tools. In summary:

(a) Level 1 covers entry level for operational employees with minimal experience and qualifications;

(b) Level 2 covers operational employees undertaking duties and responsibilities in excess of Level 1 with relevant local government industry or equivalent experience;

(c) Level 3 covers operational employees undertaking duties and responsibilities in excess of Level 2 and entry level administrative employees;

(d) Level 4 covers operational and administrative employees undertaking duties and responsibilities in excess of Level 3 and is the entry level for technical and trades employees;

(e) Level 5 covers technical, administrative and trades employees undertaking duties and responsibilities in excess of Level 4;

(f) Level 6 covers administrative, technical or trades employees undertaking duties and responsibilities in excess of Level 5;

(g) Level 7 covers specialist technical employees undertaking duties in excess of Level 6 and is the entry level for graduate professional employees;

(h) Level 8 covers professionals/specialists positions that provide both advisory and project management responsibilities in excess of Level 7. The positions in Level 8 generally have a major impact upon the day-to-day operations of a function, department or work area of the employer;

(i) Level 9 involves duties and responsibilities in excess of Level 8 and typically involves key specialists in a specific field and undertaking of a management function. Level 9 also covers experienced professionals;

(j) Level 10 positions can be described as those which have a management focus upon the attainment of operational and strategic objectives. This level includes senior managers who report to senior executive officers;

(k) Level 11 positions can be described as those which have a management focus upon the attainment of operational and strategic objectives undertaking duties and responsibilities at a higher level than Level 10 and includes senior executive officers (but not the chief executive officer, however described)

who have overall responsibility and accountability for a number of significant functions.

[120] The LGAQ's submission includes, in respect of each Level, a set of brief, generic descriptions of aspects of the role and the skills to perform that role under the following headings: authority and accountability, judgment and problem solving, specialist knowledge and skills, management skills (not required at Levels 1 to 3), interpersonal skills, qualifications and experience. The minimum weekly rate of pay for each level would be calculated by reference to the minimum weekly rate for level 4 (100%), ranging from Level 1 (87.5%) to Level 11 (210%).

[121] The scheme proposed by the LGAQ also includes transitional provisions for existing employees covered by pre-modernisation awards, who (on the commencement of the award) would be entitled to be paid no less than the rate of pay corresponding to their pre-modernisation award classification level (the preserved pay rate). Within 12 months, the employers would assign an employee to a new classification level within the award having regard to the classification descriptors for Levels 1 to 11. If the employee’s pay at the new level is less than the employee’s preserved pay rate, the employee would be entitle to receive the preserved pay rate until the employee's nominal pay rate equals or surpasses that preserved pay rate. The LGAQ submits in relation to its proposed scheme that:

(a) the comprehensive classification methodology is based on that from the national *Local Government Industry Award 2010*, and the methodology is easy to understand and apply, and does not suffer from the significant inconsistencies that, in the LGAQ's submission, the proposal in the Exposure Draft contains;

(b) the proposed classification methodology has had the benefit of robust debate by interested parties and scrutiny by a Full Bench of the AIRC, both in the context of a contemporary local government setting and against award modernisation objectives in very similar terms to those which this Commission must prescribe a single award for the Local Government sector;

(c) the proposal is accompanied by clear and easy to understand and apply transitional arrangements for existing employees subject to pre-modernisation awards applying to local governments, and will provide for the orderly transition while ensuring that existing employees do not have their current wage rate as prescribed by pre-modernisation awards reduced by virtue of transition to the new classification structure;

(d) the minimum wages which the classification descriptors inform have had regard to properly fixed minimum rates of pay, and the wages have been fixed by reference to the established intra-award and inter-award relativities accepted by a Full Bench of the AIRC during the national award modernisation process, but as these correspond to the equivalent Queensland rates prescribed by the *Engineering Award - State 2012*;

(e) the descriptors derived from the *Local Government Industry Award 2010* are necessarily "quite broad," reflecting the extensive and diverse range of services provided and occupations engaged to deliver services;

(f) the Commission can have confidence that the rates of pay ascribed to the classification levels proposed by the LGAQ ensure that regard is had to the principle of equal pay for equal work because the rates were extracted from the *Local Government Industry Award 2010*;

(g) given that the *Local Government Industry Award 2010* sets safety net community standards for local government work operating in parts of Australia, and has been subject to a national modernisation process which has properly fixed minimum rates in modern awards, weighty regard should be had to that award when setting minimum rates for comparable work within the Exposure Draft;

(h) hence, if the Commission adopted the LGAQ's proposed classification methodology and associated wages, the Commission would have had due regard to the safety net of community standards operating in respect of similar work in other parts of Australia, including properly fixed minimum rates; and

(i) because the LGAQ's proposed alternative classification methodology and the associated method of setting and paying minimum wages has been taken directly from the *Local Government Industry Award 2010,* it is consistent with the award modernisation objectives in the Act and paragraph 8 of the Attorney-General's Request.

[122] In the alternative, the LGAQ submits that if:

(a) the various classification methodologies and associated payment of wages contained in Clause 12.5 and Schedule 1 of the Exposure Draft maintain service increments; and

(b) the Commission decides to retain these methodologies in their current or some amended form,

such service increments should be removed because they are not appropriate for inclusion in a modern award that must be a safety net.

[123] The LGAQ notes that adoption of its proposal would require a range of consequential amendments throughout the Exposure Draft, to aspects of Clauses 9, 12, 13, 15, 20 and 22. Those amendments are clearly set out in the LGAQ's submission.

[124] The QSU provided the most comprehensive critique by a union Objector of draft Clause 12. In its submission the QSU objected to Clause 12.1(a) and proposed clauses that would fix salary scales for officers in the Administrative, technical, community services, supervisory and managerial (other than Indigenous Councils) group. The proposed clause lists 8 levels (each with 3 or more increments) and the way in which junior rates are to be calculated. Movement to the next highest salary point within a level would

usually be by way of annual increment, subject to the employee having given satisfactory services for the prior 12 months.

[125] The QSU's submission sets out in some detail the characteristics, requirements, responsibilities, organisational relationships, and extent of authority of each level, and information about appointment and progression for most levels.

[126] In support of its proposal, the QSU submitted that the rates of pay should be drawn from the *Queensland Local Government Officers Award 1992* (which covers approximately 18,184 employees). The Exposure Draft, however, contains rates of pay and classification drawn from the *Municipal Officers' Award (Aboriginal and Islander Community Councils) Award 2004* and from the *Clerical Employees' Award - State 2012*. Those awards cover relatively few employees (104 and 105 respectively). The QSU submits that the classifications in the *Municipal Officers Award* reflect a classification structure which was removed from the salaried officers' structure with the making of the *Queensland Local Government Officers Award 1992*. For reasons set out in its submission, the QSU describes the *Municipal Officers Award* as obsolete. The *Clerical Industry Award* has only been used for employees employed in Indigenous Councils not covered by the *Municipal Officers Award*.

[127] According to the QSU, the eight level structure took two years of negotiations to develop and was the subject of extensive trialing and various proceedings. It was underpinned by the award relativities developed in the metal industry. The rates of pay in that structure continue to reflect the metal industry template and line up with a number of rates that are in the modern awards in the *Manufacturing and Associated Industries Award 2010*, the *Professional Employees Award 2010*, and the *Clerical Employees Award - State 2012*. The QSU submits that the current classification structure is consistent with the national and Queensland minimum rates, should not be disturbed, and satisfies the requirements of the legislation and the Attorney-General's Request. It also submits that the current eight level structure contains properly fixed minimum rates as required by paragraph 8 in the Attorney-General's Request.

[128] The QSU quotes passages from decisions of the AIRC[12] and Fair Work Australia[13] which emphasise that properly fixed minimum rates of pay require consideration of the relativities between the classifications and minimum wages in one award and those in other awards. The QSU submits that, because the rates for such a substantial number of employees are and have been properly fixed and relativities in accordance with the national relativities have been established and maintained, the Commission should not lightly depart from them. Further, there is no need for any departure under either the Act or the Attorney-General's Request. The QSU also submits that the *Local Government Industry Award 2010* should not be followed because:

(a) the Full Bench of the AIRC did not consider that it was dealing with all local governments, and it can be concluded that the Federal Modern Award was made on the basis that it would not apply to the vast majority of local governments operating in Queensland (yet, by contrast, the existing award provision was made to contain properly fixed minimum rates which would

[12] *Award Modernisation Decision - Full Bench* [2009] AIRCFB 345, [43]

[13] *Australian Municipal, Administrative, Clerical and Services Union re Airline Operations Ground Staff Award 2010* [2010] FWAFB 965, [13]

apply to all local governments in Queensland other than Brisbane City Council and the Community Councils); and

(b) the Full Bench of the AIRC did not hold that increments could not be a feature of a modern award but did reflect that there was a tension for increments based exclusively on years of service.[14]

[129] The QSU submits that until now there has been no confusion about which award employees should be classified under, and few cases before the Commission about whether an employee has been classified under the correct award. The QSU describes the structure it proposes as providing "some further streamlining of a classification structure which has stood the test of time and remains relevant". The QSU also submits that to do more streamlining than this is not required by the current modernisation process. Significantly, the QSU makes no submission in relation to what should be done with the other classification structures operating in the Local Government sector, but submits that there should be no attempt at streamlining them by merger with the structure that the QSU proposes. Rather, if the Full Bench makes an award structure along the line proposed for the employees represented by the QSU, any further banding of structures in the award should be considered on an application.

[130] The other submissions by Objectors in relation to Clause 12 of the Exposure Draft were more specific and narrow in focus.

(a) In relation to Clause 12.7(a) in the Exposure Draft, United Voice sought a minor adjustment up in two of the amounts nominated in that clause to reflect the relevant provision of the existing *Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South Eastern Division 2012*;

(b) In relation to Clause 12.8 in the Exposure Draft, the AMWU, ETU and PGEU submit that, although payment by electronic funds transfer should be the default option, some employees who work in remote locations may not have ready access to banking facilities and might be disadvantaged if paid by EFT. These Objectors submitted that such employees should be able to request to be paid in cash or by cheque if one of those options is more workable in the location where they are based (whether temporarily or permanently);

(c) In relation to Clause 12.11 in the Exposure Draft, the AMWU, ETU and PGEU submitted that the clause should also provide that if an employee is engaged performing duties at a higher level for a period of 4 hours or less, the employee will be paid at the higher rate for 4 hours. They make this submission on the basis that the clause applies to employees who work in trades and are engaged in higher duties for shorter periods than employees in white collar areas (who are more likely to be engaged in higher duties for full days or weeks at a time). Such employees should be duly compensated. The Objectors express the view that, if this additional safeguard is not included in the modern award, blue collar employees are likely to be disadvantaged.

[14] *Award Modernisation - Decision - re Stage 4 Modern Awards* [2009] AIRCFB 945, [140].

[131] In reply to those submissions, the LGAQ:

(a) opposes the QSU's proposed changes to Clause 12.1 (as it submits that Clauses 12.1 to 12.6 and associated Schedule 3 should be deleted and replaced with the LGAQ's proposal) and provides a detailed critique of the QSU's proposal, submitting among other things that:

(i) the QSU proposal "offers no alternative to practically deal with the significant 'structural' overlap issue which exists between the Exposure Draft descriptors at Schedule 3";

(ii) the increased rates of pay proposed by the QSU would "only further exacerbate the inequity in the rates paid to corresponding, overlapping levels";

(iii) a "fundamental flaw" in the QSU's approach was its express lack of submission in relation to classification structures for employees other than those represented by the QSU;

(iv) contrary to the QSU's submission, there has been confusion as to which award local government employees should be classified under, and that confusion impacts significantly on wage rates;

(v) the LGAQ opposes the QSU's proposal for the inclusion of service increments within the classification levels; and

(vi) the QSU's submission that the *Local Government Industry Award 2010* should not be followed in Queensland is rebutted on the basis that there is no other practical alternative to that approach to classification and fixing safety net wages which would meet the modern award objectives or provide a sound basis for setting a minimum safety net standard;

(b) does not oppose the small adjustment to an allowance in Clause 12.7(a)(i)(B), but rejects the changes that United Voice sought to Clause 12.7(a)(i)(A) (as it submits that the clause should be deleted);

(c) opposes the amendment to Clause 12.8 sought in the joint submission; and

(d) objects to the amendments proposed to Clause 12.11 by the joint submission.

[132] Apart from the LGAQ and the QSU, the Objectors made relatively few, and focused, submissions in relation to draft Clause 12. These Objectors made more wide ranging submissions in reply to the proposals advanced by the LGAQ. In summary, these Objectors generally opposed the LGAQ's scheme, including on the basis that adoption of that scheme would result in a reduction in employees' take home pay. Their submissions in relation to the LGAQ's submissions on specific clauses included the following:

(a) Clauses 12.1 to 12.6 (and associated Schedules 1, 2, 3, 4 and 5): the QSU opposes the LGAQ's proposal and suggests that, if that proposal is approved, it would call into question the result that a modern award did not promote the

principle of equal remuneration for work of equal value (see s 140BB(2)(e) of the Act). The AWU, United Voice and TWU also oppose the proposed change. The TWU submits, for example, that the LGAQ's proposed classification structure appears most suited to white collar employees and would see a degree of confusion as to precisely where truck drivers would sit in that structure and might result in drivers being classified at lower levels than at present. The TWU went on to submit that the scheme proposed by the LGAQ "will not be clear or easy to understand and apply and is likely to be the cause of much disputation and disagreement as to where employees should fit within it";

(b) Clause 12.7: the AWU and United Voice oppose the proposed change;

(c) Clause 12.8: the AWU opposes the proposed changes;

(d) Clause 12.9: the AWU opposes the proposed change;

(e) Clause 12.10: the QSU opposes the deletion of this provision and states that there has been no previous call for its removal, and the AWU opposed the proposed change;

(f) Clause 12.11: the AWU opposes the proposed change;

(g) Clause 12.12: the QSU opposes the proposed clause on the basis that any employee instructed to perform duties or relieve another employee for which a higher rate of pay is prescribed should receive that higher pay, and the AWU opposes the proposed change.

[133] The preceding summary of written submissions in relation to Clause 12 of the Exposure Draft, and of written submissions in reply, illustrates both the breadth and depth of concerns expressed by the various Objectors and the extent to which Objectors are entrenched in their respective positions. The issues canvassed in those submissions go to the heart of the proposed scheme, and their resolution will influence the operation of the proposed modern award.

[134] However, as a result of ongoing negotiations, agreement was reached between the QNU, QIEU and the LGAQ in relation to those parts of Clause 12 and the Schedules dealing with the Children's services and early childhood education stream and the Nursing stream.

[135] The AWU referred to Clauses 12(a)(i) and (ii) and Schedule 3 and noted that the definitions for the Operations group maintained the current arrangements. It would be easy for people to determine where they are covered. There would be no negative impact from Clause 12, and their members would not be disadvantaged. The AWU was critical of the LGAQ's proposal and supports the Exposure Draft proposal.

[136] The AMWU, ETU and PGEU expressed some concerns about there being one award and the broad banding of classifications. However, it was submitted that the LGAQ's proposal was not the solution, and expressed a preference for the Exposure Draft proposal. Among other things, the Exposure Draft maintains the procedure for

classifying employees. It was further submitted that the descriptors in Schedule 3 should be retained to avoid confusion and inequity.

[137] One of the features of the Exposure Draft that attracts the AMWU, ETU and PGEU to its provisions (namely the use of classification descriptors from the pre-modernised awards) is a feature which the LGAQ criticises trenchantly because, in the LGAQ's submission, it will lead to unnecessary disputation, confusion and potentially unsustainable claims. That consequence was not identified by other parties. To the contrary, they submitted that it provided a degree of certainty for the vast majority of employees who would be covered by the modern award. Any issues could be dealt with in enterprise bargaining negotiations with the relevant local government.

[138] It is apparent from the consideration of the factors that must be accommodated when making this modern award and the alternative schemes for classification being advanced in this case, there is no single or perfect way of resolving the issue.

[139] The Full Bench recognises that each of the alternative schemes proposed by the LGAQ and the QSU has some merit. However, for practical and structural reasons, the Full Bench is not convinced that either proposal is inherently superior to the structure contained in the Exposure Draft.

[140] As would be apparent from the summary of the scheme proposed by the LGAQ, the criteria characterising who would be covered by each Level are expressed in broad terms. There would appear to be potential for argument about which Level applies to some employees or groups of employees. Also, because that structure has significantly fewer levels than the scheme in the Exposure Draft, the range of pay rates in each Level could be greater than under the Exposure Draft. Consequently, it might be that the overall cost to councils of adopting the LGAQ's scheme would be higher (at least until assignment to new classification levels within 12 months after the scheme commenced) because employees would be transferred at a pay rate higher than what they are paid currently.

[141] A shortcoming of the QSU's proposal is that it expressly would not apply to employees in the General stream other than those in the Administrative, technical, community services, supervisory and managerial (other than Indigenous Councils) group, and would not apply to employees in the other streams.

[142] Having considered carefully the range of submissions, the Full Bench has decided to adopt, with some modifications, the scheme for classifying employees as set out in the Exposure Draft because, in broad terms:

(a) it is the product of a process in which the AMOD Team was able to consider many, if not all, of the matters in issue before the Full Bench;

(b) it enables current employees to identify where they fit in the scheme; and

(c) it is more closely aligned with the pay scales and ranges of pay applying to current employees so that the cost to local government of implementing the modern award is not excessive.

[143] In relation to the second point, the streams specified in the Exposure Draft make separate arrangements for employees engaged in the provision of children's services and early childhood education and for employees engaged in nursing. The distinct provisions, in the relevant parts of Clause 12 and in Schedules 4 and 5 respectively, are appropriate having regard to their particular skills and current weekly hours of work. Agreement has been reached between the QNU, QIEU and the LGAQ about the content of those provisions.

[144] The great majority of employees to be covered by this modern award, would be allocated to one of the 12 groups listed in the General steam. The Full Bench has concluded that the name of and descriptors for each group adequately identify the functions and roles of the employees to be included in the group. Although there may be instances where there is some debate or discussion about the group into which a particular employee/employees should be placed, that issue could be dealt with by negotiation. It is not a reason not to adopt this scheme.

[145] However, the distinction between the first two groups of the General stream, i.e. between employees of Indigenous Councils and employees of councils other than Indigenous Councils, should be removed. The Full Bench is aware that the pay scales for employees of Indigenous Councils may not be the same as the pay scales of their counterparts in other local government. To entrench that disparity in a modern award would fly in the face of s 140BB(2)(b) of the Act, which states that, in performing its award modernisation functions, the Commission must have regard to "the need to help prevent and eliminate discrimination in employment". We also acknowledge that Indigenous Councils will face significant financial burdens (in the absence of additional funding) when they have to pay all their employees at the same rate as employees of other local governments.

[146] At the hearing on 21 September 2014, the QSU and the LGAQ agreed that the disparity between those two groups of employees should be removed and that there should be a suitable transition period to effect the harmonisation of pay scales. The QSU noted that few of the Indigenous Councils currently have certified agreements.

[147] The Full Bench notes that the transitional arrangements in Schedule 1 to the Exposure Draft may have the result that, after two years, the rates of pay will be similar, if not the same, for the employees of Indigenous Councils as for comparable employees of non-Indigenous Councils. That outcome will only be assured if the classification levels for employees of Indigenous Councils are aligned with those of their counterparts in non-Indigenous Councils. Accordingly, we will direct the AMOD Team to review the classifications of employees in the Administrative, technical, community service, supervisory and managerial (Indigenous Councils) group and to prepare a proposal before 30 November 2014 to ensure that such harmonisation of wage levels will be achieved by two years after the modern award commences to operate.

[148] Because such a determination will have financial implications for Indigenous Councils that might be more significant than the financial impact of the modern award for other local governments, we would urge the Queensland Government to consider positively any submissions made by Indigenous Councils for additional funding to meet any shortfall that might otherwise occur in the relevant financial years to give effect to this aspect of the modern award.

[149] The Full Bench has decided to adopt the scheme set out in Clause 12 of the Exposure Draft, but with modifications to particular paragraphs (some of them agreed by relevant Objectors) to:

(a) correct minor typographical or other errors, refine the drafting or make minor changes (e.g. Clauses 12.1(c)(ii), 12.4, 12.5(b);

(b) remove the Notes to Clauses 12.2, 12.5 and 12.7;

(c) remove the table of award rates for the Nursing stream from Clause 12.5(c) and insert it in Schedule 5;

(d) revise Clause 12.7(a) to increase slightly the amount of the Hospitality group - late work payment to the amount in the existing provision of the relevant current award; and

(e) recast and expand the text of Clauses 12.11 and 12.12 to clarify their scope of operation.

[150] The Full Bench has also decided not to make most of the specific amendments sought by Objectors as outlined above, as the Full Bench is not satisfied that they are appropriate for the scheme contained in Clause 12, which has been developed to apply to a wide range of Local Government sector employees.

[151] We note that employees in different streams are currently working different hours each week (i.e. an average of 36.25, 37.5 or 38 hours each week). The hours of work to be performed by employees covered by this award are discussed later in these reasons for decision in relation to Clause 15.

[152] **Clause 13 - Allowances:** The Full Bench provided the Objectors with its preliminary view of this clause on 17 September 2014 and, having received the Objectors' views at the hearing, the Full Bench decides as follows in relation to:

- the proposed creation of a Local Government Industry Allowance;
- provision of a preservation order in specified circumstances;
- each of the allowances identified in Clause 13;
- locality allowance; and
- divisional and district allowances.

(a) Local Government Industry Allowance: The AWU, AMWU, ETU, and PGEU oppose the establishment of the Local Government Industry Allowance (Industry Allowance). In particular, these Objectors argue that Clause 13(a) provides a level of monetary compensation less than the allowance regime under the existing awards. The submission is that the proposed clause would disadvantage employees who are suffering from discrete and separate disabilities on one occasion during the course of a working day. In addition, the disadvantage would be further

compounded in the event that multiple disabilities were suffered at the same time or during the same day. As a consequence, they argue that the flat rate of $0.50 per hour would not provide proper or fair compensation;

(b) The AMWU, ETU and PGEU oppose the Industry Allowance on the following grounds:

- it is a significant departure from the historical entitlement to an allowance arising as a result of a discrete disability being suffered by an employee;
- the quantum is lower than many allowances currently payable to employees under pre-modernised awards;
- it departs from the established principle of accumulation of allowances and acknowledgement that an employee should, in most circumstances, receive payment for each disability suffered;
- it does not apply in situations where other allowances payable under the proposed modern award apply; and
- it creates disadvantages and inequities to those employees required to work in environments and conditions in which they ought to be duly compensated for by way of separate and discrete allowances.

(c) In short, the AMWU, ETU, and PGEU submit that Clause 13(a) should be deleted from the modern award and be replaced by discrete and separate disability entitlements that can be accumulated in circumstances where more than one disability is being suffered. In the alternative, the AMWU, ETU, and PGEU submit that, should the Full Bench be minded to determine that the modern award should include an Industry Allowance, there should be:

- an increase in the per hour flat rate payable to employees in the building trades group, engineering and electrical/electronic group and operations group, respectively, of the General stream to $1.50 per hour;
- provision for additional payments of $0.50 per additional disability when one or more disabilities as detailed in Clause 13(a) ae being suffered; and
- an accumulation of special rates provision to ensure employees suffering from multiple disabilities that are subject to allowances elsewhere in Clause 13 are duly compensated for each disability suffered, unless otherwise already excluded by the current award allowance provisions.

(d) The LGAQ supports the incorporation of the Industry Allowance in the modern award. However, it submits that the clause should be amended to delete reference to 'streams'. The submission of the LGAQ is based on a different classification methodology than that adopted by the AMOD Team and by this Full Bench.

(e) The Full Bench, in considering the submissions, has formed the view that an Industry Allowance should be included in the award. The approach taken by the AMOD Team reflects, in the Full Bench's view, one of the objects of the modern award process - namely, to provide for awards that are simple to understand and easy to apply.[15] The Full Bench was advised that in excess of 200 separate allowances have been reduced to 19 in the Exposure Draft. It is apparent to the Full Bench that the incorporation of the Industry Allowance into the modern award would provide significant cost and administrative savings to the Local Government sector, and its inclusion is consistent with the award modernisation process.

(f) **Preservation Order:** Whilst accepting the utility of incorporating the Industry Allowance into the modern award, the Full Bench is nevertheless cognisant of the fact that the introduction of the modern award could lead to a reduction in the amount of an allowance, or the total amount of allowances, payable to an existing employee under Clause 13. To deal with such a situation, the Full Bench raised, in the hearing of this matter, the prospect of permitting a local government employee as at 1 January 2015 to seek a preservation order from the Commission once the modern award applies to that employee. In this regard, the Full Bench has, after hearing further argument on the construction of the proposed order, formed the view that the following process should be adopted:

> "Application for a preservation order
>
> Employees as at 1 January 2015 who consider that the introduction of the modern award has led, or will lead, to a reduction in an allowance, or the total amount of allowances, payable to them under Clause 13 of the award may be able to seek a preservation order from the Commission. To gain a preservation order the employee must first meet the following criteria:
>
> (i) an application must be made within 12 months from the time the award applies to the employee;
> (ii) an employee must first use the individual dispute resolution procedures contained in Clause 8.1 of the award;
> (iii) the employee must show that a reduction in an allowance, or the total amount of allowances, is attributable to the modern award;
> (iv) the Commission must be satisfied that the employee claiming a reduction in an allowance has actually suffered a reduction in an allowance or is likely to suffer a reduction in an allowance;
> (v) any reduction in allowance will be assessed over a 6 month period;
> (vi) any application must be for a sum in excess of $247 calculated over a six month period; and
> (vii) the employee has not been adequately compensated in other ways for the reduction.
>
> If successful in gaining a preservation order an employee will have their allowance or allowances preserved while they remain in the same job. The allowances paid under this order shall be automatically increased from the

[15] S140BA(a) of the Act

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 award rates."

(g) The Full Bench believes that the ability of an employee to make an application for a preservation order in circumstances where an employee considers that the modern award has led, or will lead, to a reduction in an allowance otherwise payable to the employee, will afford to such an employee an appropriate measure of protection. If it becomes evident to the Commission that the number of applications for preservation orders are substantial and there is a significant reduction in the quantum of allowances payable to employees as a direct consequence of the award modernisation process, then the Commission can, if necessary, pursuant to its arbitral powers, undertake a review of Clause 13(a).

(h) The QNU seeks an amendment to Clause 13(b) (Aged care nurses - availability allowance) to ensure that the clause properly articulates the particular circumstances under which the allowance would arise. The Full Bench is advised that agreement has been reached between the QNU and the LGAQ to insert the following amended clause:

"(b) Aged care nurses - availability allowance

A nursing employee or other employee working in an aged care facility operated by local government, required to remain on the employer's premises and be available for duty during their meal break shall be paid an allowance of $10.45 per shift."

(i) No objection was received in relation to Clause 13(c) (Broken shift allowance) of the Exposure Draft proposal and accordingly the clause will be inserted into the modern award without amendment.

(j) The TWU objects to the inclusion of the words "suitable standard" in Clause 13(d)(ii) of the Exposure Draft (Camp allowance and accommodation) to refer to the standard of camp accommodation. The TWU seeks the insertion of the current Clause 10.1 and 10.2 of the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003.* As part of its submissions, the TWU undertook an historical analysis of the award provisions relating to camp accommodation. The Full Bench, after considering the submissions, has determined that a minimum suitable standard of camp accommodation would be that which is now included in Clause 10.1 and Clause 10.2 of the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003*. That minimum standard is also found in Exhibit 10 in the proceedings. Should any local government seek to provide camp accommodation of a lesser standard, it will need to refer the matter to the Commission for conciliation and/or arbitration.

(k) The LGAQ submits that Clause 13(e) (Drivers of sanitary, rubbish or sullage vehicles and their assistants) should be deleted from the Exposure Draft as it no longer reflects the way in which the work is carried out in the modern workforce. The LGAQ submits that the nature and type of work has changed over time and local government employees who drive sanitary, rubbish or sullage vehicles or who

work as assistants generally collect waste from the cabin of the vehicle using hydraulic or mechanical means. The LGAQ submits that there is no longer a disability requiring compensation by way of such an allowance in a modern award. The TWU objects to the removal of the allowance and its replacement with the Industry Allowance of $0.50 per hour. In his affidavit, Craig Williams[16] deposes:

> "The introduction of side loaders has not completely done away with manual handling of waste. Local councils require their employers or their contractors to provide services to the aged and infirm who are unable to take out their wheelie bin. This service is colloquially known in the industry as a "sickie" or "infirm". The driver must alight the vehicle, collect the wheelie bin from the yard, empty the bin using external hydraulic controls and then return the bin to the yard. Drivers must also get out of the truck to move and empty bins that are located behind parked vehicles."

(l) It was further submitted by the TWU that waste workers collect waste from local government parks and other roadside collections. Such work is not undertaken from the cabin. The Full Bench was advised that Ipswich City Council, Townsville City Council, Bundaberg City Council and Rockhampton City Council employ their own drivers rather than contract out the waste management services to private enterprise. The TWU submitted that the allowance contained in Clause 13(e) of the Exposure Draft should be amended to better reflect the nature of the work undertaken by waste workers. In support of that submission, the TWU submitted a number of examples which illustrated the potential loss to existing employees.

(m) The Full Bench, having considered the submissions, has adjusted the allowance in Clause 13(e)(i) to $1.50 and in Clause 13(e)(ii) to $1.70 per hour. Clause 13(e) would therefore provide as follows:

> "(e) Rubbish and sanitary operations allowance
>
> (i) Drivers of rubbish vehicles and their assistants primarily engaged on the collection of refuse shall be paid an additional amount of $1.50 per hour whilst directly engaged on such work.
>
> (ii) Drivers of sanitary vehicles and their assistants shall be paid an additional amount of $1.70 per hour whilst directly engaged on such work."

(n) There was no objection to the Exposure Draft proposal for Clause 13 (f) (first aid allowance) in the Exposure Draft and the Full Bench is of the view that the clause should be inserted into the modern award without amendment.

(o) Clause 13(g) provides for a Leading hand allowance. The AMWU, ETU, and PGEU submit that the leading hand should be included in the count of employees for the purposes of calculating the number of employees a leading hand might be in charge of. We disagree. The Full Bench does not consider that the allowance should be payable in such circumstances. The allowance is designed to provide

[16] Affidavit of Craig Williams affirmed 5 September 2014 para 17.

compensation for the added responsibility associated with supervision of employees. In our view, no justification has been advanced to support the proposed amendment.

(p) Whilst the AMWU, ETU, and PGEU support a tiered system for Leading hand allowances, they are opposed to the quantum of the allowances payable under Clause 13(g) of the Exposure Draft. The LGAQ has submitted that Clause 13(g)(i) should be amended to provide for clarity of application. It seeks the insertion of the words "…as a leading hand" in Clause 13(g)(i) to ensure that the clause only applies in circumstances where an employee has specifically been appointed by the employer as a "leading hand". The Full Bench is of the view that the clause as circulated to the Objectors should be included in the modern award.

(q) In the Full Bench's preliminary view (provided to the Objectors on 17 September 2014) the Live sewer work allowance (Clause 13(h)) provided that "[f]or the purposes of this clause, live sewer work shall mean work carried out in situations where there is direct aerial connection with sewer through which sewerage is flowing". The AMWU, ETU and PGEU sought the following amendments to Clause 13(h):

- a provision in which a minimum payment of one hour is applicable for work pumps after removal, from a pumping station or treatment works for cleaning and stripping; and

- a provision in which time travelled to and from such operations relating to live sewer work is counted as time for the purposes of the allowance.

The Full Bench accepts the submission of the AMWU, ETU, and PGEU that the words, "[t]he allowance shall also apply to include a minimum payment of one hour for work on pumps after removal from a pumping station or treatment works for cleaning or stripping" and has agreed to insert this into the modern award at Clause 13(h)(ii).

(r) In considering its position on Clause 13(h), the Full Bench noted the affidavit of Steven Wayne Robertson.[17] In argument before the Full Bench, it was submitted by the LGAQ that Clause 13(h)(v) should be amended to delete the word "aerial" and have it replaced with the word "personal" and that "sewage" be inserted after "with". The words "a sewer through which sewerage is flowing" in the first sentence of Clause 13(h)(v) is deleted.

(s) There was no objection to the Exposure Draft proposal for Clause 13(i) (Motor vehicle allowance) or Clause 13(j) (Night supervisor allowance - registered nurse) in the Exposure Draft and the Full Bench is of the view that the clauses should be inserted into the modern award without amendment.

(t) The Exposure Draft provision in respect of Clause 13(k) (Overtime meal allowances and meal breaks) is opposed by the AMWU, ETU, and PGEU. The basis of their objection is that the *Engineering Award - State 2012* currently

[17] Exhibit 6.

provides that employees required to work after the usual ceasing time for more than one and a-half hours shall be supplied with a reasonable meal at the employer's expense or be paid a meal allowance of $12.10 in lieu. The Exposure Draft provides that a meal allowance entitlement under the clause arises after two hours of overtime after ordinarily ceasing time. Further, Clause 13(k)(iii) is opposed on the basis that the meal break is unpaid. The AMWU, ETU, and PGEU submit that employees are currently entitled under the *Engineering Award - State 2012* to a break of "30 minutes to be paid at ordinary time rate, with one-and-a-half hours of ceasing such ordinary time work."[18] Accordingly, Clause 13(k)(i)(A) and (B) is sought to be amended by deleting two hours after ordinary ceasing time and inserting in lieu 1.5 hours.

(u) The LGAQ submits that Clause 13(k) in the Exposure Draft requires amendment to clarify its application and intent. The LGAQ further submits that there is inconsistency in the application of ordinary time meal breaks and overtime meal breaks. It is the submission of the LGAQ that, consistent with the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003* the period before which a break is provided should be five hours rather than four hours as proposed in the Exposure Draft. The LGAQ submits that the meal allowance should not be paid in the following circumstances:

(i) employees receive notice the day prior to the overtime or earlier, and therefore have the ability to provision for their own meal arrangement; or

(ii) where as provided by the Exposure Draft, Clause 13(k)(v) employees have brought a meal into work having received notification of prior over time, but that overtime is cancelled. There is no disability in the cancellation of overtime, which would necessitate a payment for a meal allowance when no meal is required, and the meal brought in by an employee itself, is also not lost.

(v) As a consequence of the matters raised above, the LGAQ submits that the clause should be amended to reflect those circumstances. The Full Bench does not accept the LGAQ's submissions. Having considered the submissions, it is the Full Bench's view that Clause 13(k) is a standard award clause which has widespread and consistent application. Accordingly, the Full Bench is of the view that the clause should be inserted as set out in the Exposure Draft.

(w) There is no objection to either Clause 13(l) (Tool allowances), Clause 13(m) (Trailers), or Clause 13(n) (Truck crane or straddle unloader) in the Exposure Draft and the Full Bench is of the view that these clauses should be inserted into the modern award without amendment.

(x) The LGAQ is opposed to the insertion of Clause 13(o) (Uniforms) in the Exposure Draft on the basis that the obligation to launder uniforms should be at the expense of the employee where the employer has provided the uniforms. The submissions of the LGAQ seek the deletion of the words "maintained, and laundered" in Clause

[18] Clause 6.7.2 of the *Engineering Award State 2012*.

13(o)(i) and the deletion of Clause 13(o)(ii). The QNU opposes the removal of an entitlement for uniforms to be laundered and maintained. The QNU submits that an award provision to maintain and launder a uniform is a well-established part of the nursing profession. In the QNU's submission, uniforms for nursing staff form an important function with regard to maintaining safety and comfort in the workplace. The QNU asserts that the provision and maintenance of uniforms or the provision of an allowance in lieu, is a well-established part of the safety net community standard operating in nursing throughout Australia. In support of that submission, the QNU directed the Full Bench's attention to Clause 16.2 of the *Nurses' Award 2010*, which contains a not dissimilar provision to that contained in the Exposure Draft.

(y) In argument before the Full Bench it was suggested that the inclusion of Clause 13(o) in its current form is contrary to the development of a modern award. However, it was noted by the Full Bench that in *Re: Making of a Modern award - Queensland Public Service Officers and Other Employees Award - State 2014*.[19], Clause 13(l) provides for a similar allowance to that which is proposed in the Exposure Draft in circumstances where an employee is required to wear a uniform. The proposed clause attracted much debate before the Full Bench but, after considering the submissions, it is the view of the Full Bench that Clause 13(o)(i) and (ii) should be included in the modern award.

(z) There was no objection to Clause 13(p)(i) (Working in water) in the Exposure Draft and the Full Bench is of the view that it should be inserted into the modern award without amendment, and that Clause 13(p)(ii) be deleted.

(aa) The AMWU, ETU, and PGEU opposed the insertion of Clause 13(q)(ii) (Working in the rain) of the Exposure Draft in the modern award. In their submission, such a provision reduces the employee's current entitlement for suffering additional disabilities. Clause 13(q)(ii) of the Exposure Draft provided that:

> "An employee entitled to an additional payment pursuant to clause 13(q)(i) shall not be entitled to any additional payments prescribed by clause 13(p)(ii)."

The LGAQ submits that an additional Clause 13(q)(ii) should be included:

> "(ii) Provided that where the employer provides rain protection clothing the employee shall in lieu of the payment at clause 13(p)(i), be entitled to an additional $4.00 per day where required to work in the rain."

(bb) The basis for this inclusion is that the provision of rain protection clothing can be made available to allow work to be performed adequately in the rain, substantially reducing any discomfort experience by an employee in undertaking such work. It would appear to the Full Bench that there is an existing obligation on an employer to provide protective equipment to an employee in circumstances where they are required to work in the rain. It is not, as the clause appears to be premised, an

[19] *Re: Making of a Modern award - Queensland Public Service Officers and Other Employees Award - State 2014* [2014] QIRC 140

option for an employer to provide such protective clothing. The Full Bench is not persuaded by the submissions of either the AMWU, ETU and PGEU or the LGAQ and accordingly is of the view that Clause 13(q) of the Exposure Draft should be inserted into the modern award with some minor amendments.

(cc) Insofar as Clause 13(r) (Adjustment of Allowances) is concerned, the Attorney-General's Request relevantly provides as follows:

> "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."

The Full Bench is of the view that the clause is an appropriate one for insertion and is consistent with the Attorney-General's request.

(dd) **Locality Allowance:** The LGAQ opposes a Locality Allowance provision in the modern award. There is no such provision in the Exposure Draft. The QSU and the QIEU seek the insertion of such allowances in Clause 13 of the modern award. In its submission, the LGAQ argues that locality allowances provide disparity and prejudice between the "haves" and "have nots". The LGAQ argues that allowances based on geographical location are not appropriate in a modern minimum award. The QSU argues that the inclusion of a locality allowance provision has a strong historical basis and employees in regional and remote areas of Queensland are reliant on the payment of such an allowance. The LGAQ, by contrast, submits that "[t]he historical genesis for these provisions in pre-modernisation awards is not a reason for their retention in a modern award context." The LGAQ goes on to submit, "[c]ost and ease of travel and transport infrastructure has changed markedly since the inclusion of these considerations; the social relativities between the centres within these predefined districts have varied considerably since their development; and technological advancement (such as tele-health) has made significant in-roads into the remoteness and isolation of these locations/districts."

(ee) The Full Bench sees merit in the submission of the LGAQ and it is appropriate that the basis for both the payment and the topographical boundaries which underpin the locality allowances should be comprehensively reviewed. In regard to the payment of a locality allowance, the Full Bench has indicated that it is prepared to continue the operation of Clause 13.1 of the *Municipal Officers' Award (Aboriginal and Islander Community Councils)* and Clause 12.1 of the *Queensland Local Government Officers' Award* 1998 until 31 March 2015. Such a course will enable applications to be filed in the Industrial Registry (prior to 30 November 2014) by any organisation seeking the insertion of locality allowances in this modern award. Provided that such applications are filed within that time, the Commission will hear and determine such applications by 10 March 2015.

(ff) **Divisional and district allowances:** The AMWU, ETU, PGEU and QNU support the retention of divisional and district allowances in the modern award. No such allowances are contained in the Exposure Draft. For the reasons articulated in relation to locality allowances, the LGAQ opposes their insertion into the modern award. The Full Bench accepts the submission of the AMWU, ETU, PGEU and QNU and will include provision for a divisional and district allowances in the

modern award. The allowances, whilst modest, nevertheless provide a tangible recognition for employees who work in regional and remote areas of Queensland. It is therefore appropriate that these allowances be included. Thus the Full Bench will include a new Clause 13(s) into the modern award in the following terms:

"**Divisional and district allowances**

In addition to the rates of wages set out in this Award, the following amounts shall be paid to employees to whom this Award applies employed in the following divisions and districts:

	Per Week
Southern Division, Western District	$1.10
Mackay Division	$0.95
Northern Division, Eastern District	$1.10
Northern Division, Western District	$3.35

The divisional and district allowances for junior employees shall be half those prescribed for adult employees."

(gg) As a consequence of the inclusion of divisional and district allowances, the new Clause 13(r) will be amended to reflect the exclusion of Divisional and District Allowances from the automatic adjustment.

[153] **Clause 15 - Hours of work:** This clause deals with the vexed issue of the number of hours to be worked each week by employees covered by this Award discussed earlier in Clauses 9 and 12. As noted in the discussion of clause 12, most local government employees currently work 36.25 hours each week, while many others work 38 hours each week and a few work 37.5 hours each week. In particular:

(a) approximately 18,487 employees in the General stream in the:

- Administrative, technical, community service, supervisory and managerial (Indigenous Councils) group

- Administrative, technical, community service, supervisory and managerial (other than Indigenous Councils) group work 36.25 hours each week;

(b) approximately 17 employees in the Children's services and early childhood education stream (i.e. teachers, but not their assistants) work 37.5 hours each week; and

(c) approximately 14,267 employees in the Nursing stream and the following groups in the General stream:

- Aged care (other than nursing) group

- Building trades group
- Clerical group
- Engineering and electrical/electronic group
- Health services officers group
- Health, sports and fitness group
- Hospitality group
- Operations group
- Theatrical group
- Our guides group

work 38 hours each week.

[154] An important issue in relation to the development of this Award is whether all employees covered by the Award should work the same number of hours each week and, if so, how that objective could be reached consistently with the requirements of the Act and the objectives described in the Attorney-General's Request.

[155] The Exposure Draft provides a scheme for dealing with current hours of work and, in effect, sets out a process for ensuring the transition of those who currently work fewer than 38 hours each week to be working 38 hours each week from 1 January 2018. That scheme is summarised below.

[156] Clause 15.1(a) of the Exposure Draft provides for the ordinary hours of duty for employees covered by the award to be an average of 38 hours per week with a maximum of 8 hours per day. However, that provision is subject to specific provisions in the table to Clause 15.1(a) showing that the ordinary hours of work per week (average) for some streams of employees are 36.25 hours or 37.5 hours, and the maximum ordinary hours of work per day would be 7.25 hours or up to 12 hours by agreement with a specified group of employees. Clause 15.1(b) provides that an employer and an employee or groups of employees may agree that the ordinary hours of work are to exceed 7.25, 7.5 or 8 hours on any day (as the case may be) to a maximum of 10 hours.

[157] Clause 15.1(c) provides for the work cycle to be calculated by reference to the maximum ordinary hours of work each day (e.g. 36.25, 37.5 or 38 ordinary hours within a work cycle not exceeding 7 consecutive days). Clauses 15.1(d) and (e) provide that different methods of working a 36.25, 37.5 or 38 hour week may apply to individual employees, groups or sections of employees in each location concerned, and that such method may be altered by the employer giving notice as prescribed. Clause 15(1)(f) provides for rostered days off.

[158] Clause 15.2 sets out a step-by-step process whereby those who currently work fewer than 38 hours each week would have their hours of work increased, so that from 1 January 2018 all employees covered by the Award would be working 38 hours each week.

[159] Clause 15.3 sets out shift work arrangements, including the specified combinations of days to be free from rostered work in each fortnight.

[160] Clause 15.4(a) describes the spread of ordinary hours of duty for day workers. It allows for consent to vary the days of ordinary duty or the spread of ordinary hours. A table in Clause 15.4(a) specifies the days of work and spread of ordinary hours and conditions for each specified stream, group, classification or area. Clause 15.4(c) identifies special circumstances which might necessitate work outside the spread of hours on a particular job or project.

[161] Clause 15.5 sets out rates of payment when a day worker performs ordinary hours of duty within the ordinary spread of hours (i.e., on which days a day worker would be paid ordinary time, time and one half, double time, or some other prescribed rate). The table in Clause 15.5(b) specifies the rate of payment on specified days or times of day, for employees in each stream, group, classification or area.

[162] Clause 15.6(a) sets out the allowance payable when employees are working an afternoon shift or night shift on Monday to Friday. Clause 15.6(b) sets out the rates of pay for shift workers doing ordinary hours of duty on a Saturday, Sunday or on a public holiday. Clause 15.6(c) provides that where the majority of the ordinary hours of a shift which commenced on one day are worked on the following day, the whole of the shift is to be treated as having been worked on the latter day. Clause 15.6(d) provides that, unless otherwise agreed between the employer and the majority of employees affected, an afternoon shift finishes after 1800 and at or before 2400, and a night shift finishes after 2400 and at or before 0800.

[163] Clause 15.6(e) specifically provides that a part-time or casual employee in the Health, sports and fitness group of the General stream may be required to work more than 2 shifts of not less than 3 hours' duration within a span of 12 hours from the start of their first shift on one day to the end of the second shift on that day.

[164] Most of the objections to Clause 15 of the Exposure Draft were made by the LGAQ. Other Objectors raised specific concerns in respect of Clause 15 and responded to the LGAQ's proposals.

[165] The LGAQ's objections, and submissions for change to the draft award, are in summary that:

(a) in relation to Clauses 15.1 and 15.2:

- all new full time employees employed after commencement of the award should work 38 ordinary hours per week;

- existing employees employed on 36.25 or 37.5 ordinary hours should become part-time employees;

- transitional arrangements are proposed for existing employees (which would make draft Clause 15.2 unnecessary);

- the ordinary hours of duty for full-time employees would be 38 hours;

- the maximum daily ordinary hours should be 10 hours, rather than 8, where agreed;

- references to streams, groups, classifications or areas in any table of hours of work should be deleted (consistently with its submissions in relation to Clause 12 and the LGAQ's proposed classification structure);

(b) in relation to Clause 15.3, specific consequential amendments need to be made to the operation and definitions regarding shift work arrangements;

(c) in relation to Clause 15.4:

- specific consequential amendments need to be made to align it with the LGAQ's proposed classification structure;

- other amendments should be made to the spread of ordinary hours to reflect the operation of a contemporary local government, given that local governments carry out activities which are open on weekends (e.g. libraries, customer call centres and civic centres) as part of ordinary opening hours);

(d) in relation to Clause 15.5:

- the Sunday penalty rate for ordinary time in Clause 15.5(a) should be time and three quarters (rather than double time) to be consistent with the national standard provided in the *Local Government Industry Award 2010*;

- the table of rates of payment should be amended to align it with the LGAQ's proposed classification structure, and one of the rates of pay should be changed;

(e) similarly, in relation to Clause 15.6:

- the Sunday penalty rate for ordinary time for shift workers should be time and three quarters; and

- Clause 15.6(e) be amended by removing "of the General stream" to align it with the LGAQ's proposed classification structure.

[166] In light of our rejection earlier of the LGAQ's submissions concerning its proposed classification structure, it is not necessary to consider the LGAQ's detailed objections to Clause 15 based on that classification structure. Other Objectors raised specific issued with respect to Clause 15.

[167] In relation to Clause 15.1, APESMA and QSU:

(a) object to a clause that provides for the ordinary hours of duty for employees covered by this award being an average of 38 hours per week with a maximum of 8 hours per day unless otherwise prescribed;

(b) propose its replacement with a detailed clause distinguishing between a full-time wages employee (engaged to work an average of 38 hours per week) and a salaried officer (whose hours of work shall be 36.25 per week), and making various adjustments for such things as allowances when salaried officers are supervising other workers working other hours.

[168] Either or both of those Objectors:

(a) note that the provision for a 36.25 hour working week has existed since a 1974 consent variation to the *Municipal Officers' (Queensland) Award 1968*;[20]

(b) submit that there will be no detriment to any local government in maintaining this provision;

(c) submit that the proposed increase of hours from 36.25 hours each week to 38 hours each week would significantly impact the majority of employees (about 18,184) to be covered by the award (including engineers);

(d) note that there is no requirement in the award modernisation process to disadvantage employees, and yet this proposal would do that;

(e) note that there is nothing in the Attorney-General's Request that directly points to an increase in hours of work for the majority of employees in this industry being required;

(f) submit that there is no evidence that increasing hours of work will achieve any of the objectives of the award modernisation process or is necessary for any particular reason;

(g) note that in other award modernisation processes, the Commission has not altered the hours of work arrangements for employees engaged to work 36.25 hours each working week;

(h) point to other awards (the *Queensland Public Service Officers and Other Employees Award - State 2014*, the *Queensland Parliamentary Service Award - State 2014*) which provide for an average of 36.25 hours per week

[20] *Municipal Officers' (Queensland) Award 1968* (164 CAR 300)

and 7.25 hours per day (although in both awards a 38 hour week is prescribed for specific occupations); and

(i) submit that there is no logic in not following the same process in this modern award, and that local government salaried officers should not be treated differently from other salaried employees in Queensland.

[169] In relation to Clause 15.4(a), the QSU raised issues about the origin of the first two entries in the Table at 15.4(iv), namely the entries referring to:

(a) employees directly engaged on the enforcement or monitoring observance of local government by-laws;

(b) administrative and clerical employees working in customer call centres, as they are not currently in the officers' award. The QSU submits that those two entries should be removed from the Table so that the employees referred to in them would work the ordinary hours of duty set out in clause 15.1.

[170] The ETU submits that, contrary to what is provided in Clause 15.4(c) of the Exposure Draft, overtime should be paid for such work done outside the spread of hours, even though the maximum number of ordinary working hours is not exceeded.

[171] In relation to Clause 15.5, some Objectors seek a variation to the Saturday rate or both the Saturday and Sunday rates in order to preserve rates currently provided under specific awards. In particular:

(a) the AWU submits that the rate for Saturday should be time and one half for the first 3 hours and double time thereafter (to reflect the current award provisions);

(b) the AMWU, ETU and PGEU submit that the rate for Saturday be time and one half for the first 2 hours and double time thereafter, with a minimum period of 3 hours' work or payment in lieu, and the rate for Sunday to be double time, with a minimum payment of 3 hours at such overtime rate (to reflect terms of the current award provisions), and that employees should not be disadvantaged as a result of the award modernisation process.

[172] In relation to Clause 15.6, some Objectors seek a variation to the Saturday rate or both the Saturday and Sunday rates in order to preserve rates currently provided under specific awards. In particular:

(a) the AWU submits that on Saturday the payment for afternoon or night shift workers should be time and one half for the first 3 hours and double time thereafter (to reflect the current award provisions); and

(b) the AMWU, ETU and PGEU submit that on Saturday the payment for afternoon or night shift workers should be time and one half for the first 2 hours and double time thereafter, with a minimum of 3 hours' work or payment in lieu and on Sunday double time with a minimum payment of 3 hours at such overtime rate (to reflect the current award provisions).

[173] These Objectors also provided written and oral responses to the submissions of the LGAQ concerning Clause 15. In essence, these Objectors clearly expressed their opposition to the changes proposed by the LGAQ. It is not necessary to particularise that opposition in these reasons for decision.

[174] The Full Bench has decided to adopt, subject to amendment, Clause 15 in the Exposure Draft other than Clause 15.2 (that would prescribe a transition from 36.25/37.5 hours each week to a 38 hour week by 1 January 2018 for those streams or groups of workers who currently work the shorter hours). The reasons for doing so are, in essence:

(a) a majority of the employees to be covered by this modern award currently work a 36.25 hour week;

(b) throughout the award modernisation process, no agreement on the standard 38 hour week was able to be achieved;

(c) to require the employees currently working 36.25 hours or 37.5 hours each week to work 38 hours in those circumstances is not warranted; and

(d) if a local government wishes to secure uniform weekly hours for its employees, it could negotiate to vary the hours of some of its employees, as appropriate, in the course of enterprise bargaining.

[175] Having carefully considered the written and oral submissions of the Objectors, the Full Bench has decided not to make substantive changes to most of the other clauses. In particular, the Full Bench has not adjusted the amounts payable for work on Saturday, Sunday or public holidays to reflect or preserve the current provisions of awards that apply to relatively few employees to be covered by this modern award.

[176] To give effect to the decision of the Full Bench in relation to Clause 15 of the Exposure Draft, the Full Bench has:

(i) omitted Clause 15.2;

(ii) revised and recast to improve or correct the drafting (e.g. as a consequence of deleting Clause 15.2), or to clarify the expression (e.g. Clauses 15.1(a), 15.2, 15.3, 15.4); and

(iii) amended to address the concerns of one or more of the objectors in relation to Clause 15.3(a)(ii).

Consequential Matters

[177] It should be noted that all wages and allowances in this modern award have been increased to reflect the outcome in the 2014 State Wage Case decision.

Conclusion

[178] The Full Bench is satisfied that the award complies with the requirements of the Act in relation to modern awards, and is consistent with the statutory objects of the award modernisation process as well as the guidance provided by the Attorney-General's Request.

[179] For reasons set out early in this decision, the process of making this award has been conducted within a tight timeframe, and the Commission has appreciated the diligent participation of most of the Objectors in that process.

[180] In preparing the award, the Full Bench has taken into account and has benefited from a range of sources including the Exposure Draft, extensive and detailed written submissions from most of the Objectors, and oral submissions from most of the Objectors. Those submissions were informed by the Exposure Draft and by the release to the Objectors, before the hearing on 20 and 21 September 2014, of the Full Bench's preliminary views: twice in relation to 31 of the clauses, and once in relation to three of the clauses of the proposed award. The release of those preliminary views served to facilitate or focus submissions and led to further refinement of the award in response to those submissions.

[181] In summary, the award will result in:

(a) a comprehensive scheme for more than 32,000 Local Government employees outside Brisbane who between them have a diverse range of roles and functions and who will be categorised within three streams: the General local government industry stream, the Children's services and early childhood education stream, and the Nursing stream;

(b) the reduction in the number of awards applying to the Local Government sector outside Brisbane from 20 to one;

(c) a reduction in the number of wage levels from more than 200 to 21;

(d) a reduction in the number of specific allowances payable to various categories of employees in the Local Government sector from approximately 200 to 19;

(e) the creation of a process to enable any employee who considers that the introduction of the award has led to a substantial reduction in the allowance or allowances payable to them to seek a preservation order from the Commission;

(f) the retention of locality allowances until 31 March 2015 so an organisation may apply to the Commission before 30 November 2014 for the insertion of locality allowances in this modern award; and

(g) consequences for the operation of a range of other awards referred to in the orders made by the Full Bench.

[182] Given the range and multiplicity of the matters covered in the award, the Full Bench has decided to release it to the Objectors first and allow each Objector 14 days to consider the provisions of the award. If any Objector or Objectors consider that the award contains any substantive or typographical errors they should notify the Industrial Registrar in writing by 4.00 pm on Monday 13 October 2014, identifying precisely what they consider should be corrected. The Full Bench will consider such written notices and make such changes as we consider appropriate before publishing the award on the Commission's website.

Orders

[183] For the reasons set out above, the Full Bench makes the following orders:

1. That the *Queensland Local Government Industry Award - State 2014* (Schedule A to this Decision) be made.

2. That Clauses 1 and 2 of the *Queensland Local Government Industry Award - State 2014* commence operation on 1 October 2014 subject to s 824 of the *Industrial Relations Act 1999.*

3. That the remaining clauses of the *Queensland Local Government Industry Award - State* 2014 commence operation on 1 January 2015 subject to the provisions of s 824 of the *Industrial Relations Act 1999*;

4. That the *Aboriginal and Torres Strait Islander Health Services Officers Interim Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

5. That the *Award for Accommodation and Care Services Employees for Aged Persons - South Eastern Division 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

6. That the *Award for Accommodation and Care Services Employees for Aged Persons - State (Excluding South-East Queensland) 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

7. That the *Building Trades Public Sector Award - State 2002*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

8. That the *Children's Services Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be

repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

9. That the *Clerical Employees' Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

10. That the *Early Childhood Education Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

11. That the *Engineering Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

12. That the *Health and Fitness Centres, Swim Schools and Indoor Sports Award - State 2012,* insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

13. That the *Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South-Eastern Division 2012,* insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

14. That the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003* be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

15. That the *Municipal Officers' (Aboriginal and Islander Community Councils) Award 2004* excluding Clause 13.1 and Clause 20.1.2 be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

16. That Clause 13.1 and Clause 20.1.2 of the *Municipal Officers' Award (Aboriginal and Islander Community Councils) Award 2004* be repealed on and from 31 March 2015 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

17. That the *Nurses' Aged Care Award - State 2005*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

18. That the *Nurses Award - State 2005*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on

and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

19. That the *Nurses' Domiciliary Services Award - State 2003*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

20. That the *Queensland Local Government Officers' Award 1998* (excluding Clause 12.1 and Clause 23.1.2) be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

21. That Clause 12.1 and Clause 23.1.2 of the *Queensland Local Government Officers' Award 1998* be repealed on and from 31 March 2015 subject to the provisions of s 824 of the *Industrial Relations Act 1999*.

22. That the *Theatrical Employees' Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

23. That the *Tour Guides Award - State 2012*, insofar as it operates in the Queensland Local Government sector (excluding Brisbane City Council), be repealed on and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

24. That the *Clerks - Private Sector Award 2010,* an award of the Fair Work Commission, not continue to operate in the Queensland Local Government sector (excluding Brisbane City Council) as and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*

25. That the *Professional Employees Award 2010*, an award of the Fair Work Commission, not continue to operate in the Queensland Local Government sector (excluding Brisbane City Council) as and from 30 September 2014 subject to the provisions of s 824 of the *Industrial Relations Act 1999.*