

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 125 - making, amending and repealing awards

**Local Government Association of Queensland Ltd AND
Queensland Independent Education Union of Employees and Others (A/2011/41)**

EARLY CHILDHOOD EDUCATION AWARD - STATE 2003

COMMISSIONER THOMPSON

31 January 2012

AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 31 January 2012 this Commission orders that the said Award be amended as follows as from 31 January 2012:

1. By deleting clause 1.3 and inserting the following in lieu thereof:

1.3 Award coverage

- 1.3.1 This Award shall apply to employers and their respective employees employed at:

- (a) Kindergartens and Preschools and other like establishments, however named, which offer an educational programme as defined by the Board of Teacher Registration but which are not Child Care Centres.

- 1.3.2 This Award shall not apply to persons covered by the *Children's Services Award - State 2006*; to any person eligible for membership with the United Voice, Industrial Union of Employees, Queensland; employees of the Queensland Public Service; or persons in holy orders or a recognised teaching order.

2. By deleting clause 1.5.2 and renumbering existing clauses 1.5.3 to 1.5.9 as clauses 1.5.2 to 1.5.8 respectively.

3. By deleting clause 4.8.1(a) and inserting the following in lieu thereof:

- (a) discrimination on the basis of sex, relationship status, family responsibilities, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality and association with, or relation to, a person identified on the basis of the above attributes;

4. By deleting clause 5.4, and inserting the following in lieu thereof:

5.4 Occupational superannuation

5.4.1 *Local Government Employers*

All Local Governments and Local Government Entities subject to this Award must comply with superannuation arrangements prescribed in the *Local Government Act 2009* and *Local Government (Operations) Regulation 2010*.

Local Governments and their Entities employing persons defined as being "non-contributory members" of the LG Super Scheme pursuant to s. 223 of the *Local Government Act 2009*, shall on behalf of such employees, contribute an amount to the LG Super Scheme that must be made to avoid being required to pay the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992* in respect of such employees.

5.4.2 *Non-Local Government Employers*

- (a) *Application* - In addition to the rates of pay prescribed by clause 5.1, eligible employees, as defined in clause 5.4.2(c)(i), shall be entitled to Occupational Superannuation Benefits, subject to the provisions of clause 5.4.2.

- (b) *Contributions*

Amount - As from 1 January 2005 every employer shall contribute on behalf of each eligible employee an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund, as defined in this clause. Each such payment of contributions shall be rounded off to the nearest ten (10) cents:

Provided that where an employee is absent and is receiving by way of workers' compensation an amount of money no less than the award rate of pay the contribution shall be calculated at 3%.

- (i) Minimum level of earnings - As from 1 January 2005 no employer shall be required to pay superannuation contributions on behalf of any eligible employee in respect of any month during which the employee's ordinary time earnings, as defined, is less than \$450.00.
- (ii) Absences from work - Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on workers' compensation.

(c) *Definitions -*

- (i) "Eligible employee" means an employee who is covered by this Award, but does not include an employee employed by a Local Government or Local Government Entity employer for which the LG Super Scheme applies, and who has been employed by an employer during four (4) consecutive weeks and who has worked a minimum of 40 hours during that period. On completion of the above qualifying period, superannuation contributions shall be made in accordance with clause 5.4.2(b) retrospective to the commencement of that period.
- (ii) "Ordinary time earnings" means the actual ordinary rate of pay the employee receives for the ordinary hours of work performed and includes locality and Directors' allowances. Overtime, holiday penalty rates, laundry, disability allowances, fares and travelling time and other extraneous payments including bonuses and commissions are not included in the calculation of ordinary time earnings.

(iii) An "Approved Occupation Superannuation Scheme or Fund" shall be:

- (A) The Queensland Independent Education and Care Superannuation Trust.
- (B) Such other scheme or fund as may be agreed upon between an employer and the Union parties to this Award and recorded in an approved Industrial Agreement.
- (C) In relation to any particular employee, any other scheme or fund to which that employer has for the benefit of employees and those employees are either members of or are eligible to become members of such scheme or fund as at 12 May 1989 and which scheme or fund is approved under the *Occupational Superannuation Standards Act 1987*.

- (d) *Freedom of choice* - Except as otherwise provided for herein, no employer shall be required to make contributions into more than one fund at any time:

Provided that employees including those in existing schemes or funds covered by clause 5.4.2(c)(iii)(C) shall have the right to choose to have contributions specified in clause 5.4.2(b) above paid into any scheme or fund provided for in clause 5.4.2(c)(iii) as decided by a majority of the employees to whom these provisions apply.

- (e) *Cessation of contributions* - An employer shall not be required to make any further contributions on behalf of an eligible employee after the end of the day upon which the contract of employment ceases to exist.
- (f) *Other contributions* - Nothing in clause 5.4.2 shall preclude an employee from making contributions to a scheme or fund in accordance with the provisions of the trust deed of the fund.

Only those established schemes or funds to which a particular employer party to this Award was actually making genuine contributions on behalf of the employees concerned as at 22 March 1989, shall be recognised under clause 5.4.2(c)(iii)(C).

The making of contributions subsequent to 22 March 1989 but on a retrospective basis, in respect of any period up to and including 22 March 1989, shall not under any circumstances, bring a scheme or fund within the meaning of clause 5.4.2(c)(iii)(C).

- (g) *No other deductions* - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the scheme or fund apart from remission of contributions on a monthly basis.

(h) *Exemptions*

(i) An employer may apply to the Commission for exemption from the provisions of clause 5.4.2 on the grounds of:

(A) incapacity to pay the costs associated with its implementation; or

(B) special or compelling circumstance peculiar to the business.

(ii) An employer may apply to the Commission for relief from the specification of funds listed in clause 5.4.2(c)(iii) where employees working under this Award are a distinct minority within the employer's workforce and/or an undue multiplicity of funds would otherwise result.

(i) *Operative date* - No employer shall be required to make Occupational Superannuation contributions greater than 9% of an eligible employee's ordinary time earnings.

5. By deleting clause 7.3.1, and inserting the following in lieu thereof:7.3.1 *Full-time and part-time employees*

Full-time and part-time employees shall, on the death of a member of their immediate family or household be entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

6. By deleting clause 7.4, and inserting the following in lieu thereof:**7.4 Long service leave**

Subject to clauses 7.4.1 to 7.4.10, employees covered by this Award are entitled to long service leave on full pay in accordance with the provisions of Chapter 2, Part 3, sections 42-58 of the Act as amended from time to time.

Where clauses 7.4.1 to 7.4.10 are inconsistent with Chapter 2, Part 3, sections 42-58 of the Act clauses 7.4.1 to 7.4.11 shall prevail to the extent of the inconsistency where such an interpretation would result in a more favourable outcome for an employee.

7.4.1 An employee covered by this Award, shall be entitled to long service leave on the following basis:

- (a) In respect of service completed prior to 1 July 1989 in accordance with section 17 of the *Industrial Conciliation and Arbitration Act 1961-1989*.
- (b) In respect of service from 1 July 1989 on the basis of 13 weeks' long service for each 10 years of service.
- (c) For an employee who is not a Teacher, the date of 1 January 1992 applies instead of 1 July 1989.

7.4.2 An employee may apply to take long service leave as from 1 July 1989 after 10 years of continuous service notwithstanding that the period of entitlement accrued may be less than 13 weeks.

7.4.3 An employer may direct an employee to take the full period of long service leave accrued within 12 months upon which the employee's accrued entitlement has reached 13 weeks and such employee shall take that leave within 12 months of the notice from the employer.

7.4.4 Any accrued entitlement to long service leave after 1 July 1989 may be in periods of no less than 4 weeks and no more than 13 weeks.

7.4.5 An employee shall provide at least 6 calendar months' notice in writing of an intention to take leave.

7.4.6 Upon termination by an employee payment in lieu of long service leave shall be made in accordance with this Award.

7.4.7 In the case of the death of an employee, the employer will be liable to pay to the employee's personal representative the whole amount of Long Service Leave which the employee would have been entitled to in accordance with clause 7.4.

7.4.8 An employee other than a full-time employee employed for a continuous period of 10 years, as defined by the Act, shall be entitled to a *pro rata* payment of long service leave in accordance with clause 7.4.

7.4.9 In respect of any further subsequent period of employment following the taking of long service leave an employee must have accrued 4 weeks of long service leave before further long service leave may be taken. However upon termination or dismissal all accrued long service leave shall become payable to the employee as calculated on the basis of 13 weeks for 10 years' service.

7.4.10 In respect to clauses 7.4.3, 7.4.4 and 7.4.5 the employer and the employee may mutually agree to vary the time periods stated.

7.4.11 Portability of long service leave entitlements for Local Government employees is provided pursuant to Division 4; Part 3; Chapter 5 - Administration of the *Local Government (Operations) Regulation 2010*.

7. By deleting clause 7.5, and inserting the following in lieu thereof:

7.5 Family leave

The provisions of the *Family Leave Award 2003* apply to and are deemed to form part of this Award.

7.5.1 It is to be noted that:

- (a) part-time work can be performed by agreement in the circumstances specified in the *Family Leave Award 2003*;
- (b) a copy of the *Family Leave Award 2003* is required to be displayed in accordance with section 697 of the Act.

7.5.2 The *Family Leave Award 2003* also provides for the terms and conditions of leave associated with:

- (a) Maternity leave;
- (b) Parental leave;
- (c) Adoption leave; and
- (d) Carers leave for the care and support of the employee's immediate family or household.

8. By deleting clauses 11.1.3 (b)(ii) and (iii) and inserting the following in lieu thereof:

(ii) has made a written request to the employer that they do not want their record inspected.

9. By deleting clause 11.2.4 and inserting the following in lieu thereof:

11.2.4 Such records shall be open to inspection during the employer's business hours by an inspector of the Department of Justice and Attorney-General, in accordance with s. 371 of the Act, or an authorised industrial officer in accordance with ss. 372 and 373 of the Act.

Dated 31 January 2012.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Operative Date: 31 January 2012
Amendment - Award Review
Released: 6 March 2012