

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: Variation and renaming of a modern award - Health Practitioners and Dental Officers (Queensland Health) Award - State 2015 No 2 [2015] QIRC 195*

PARTIES: State of Queensland (Queensland Health)

The Australian Workers' Union of Employees, Queensland

Queensland Nurses' Union of Employees

Together Queensland, Industrial Union of Employees

United Voice, Industrial Union of Employees, Queensland

CASE NO: MAP/2015/5

PROCEEDING: Variation of a Modern Award

DELIVERED ON: 19 November 2015

HEARING DATE: 8 October 2015

HEARD AT: Brisbane

MEMBERS: Vice President Linnane
Deputy President Kaufman
Industrial Commissioner Neate

ORDER **That the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* be varied by:**

(a) **Deleting the numerals "2014" from the title and inserting in lieu thereof "2015"; and**

(b) **Deleting Clauses 1 to 29 and Schedules 1 to 4 and inserting in lieu thereof the Clauses and Schedules appearing in the retitled award released concurrently with this decision.**

CATCHWORDS: VARIATION OF A MODERN AWARD - Section 140C(1) of the *Industrial Relations Act*

1999 - Request from the Minister for Employment and Industrial Relations that a modern award for Health Practitioners and Dental Officers be made - *Health Practitioners and Dental Officers (Queensland Health) Award - State 2015* – Modern Award made.

CASES:

Public Service Act 2008

District Health Services Employees Award - State 2012

Health Practitioners and Dental Officers (Queensland Health) Award - State 2014

Re: Variation and renaming of a modern award - Health Practitioners and Dental Officers (Queensland Health) Award - State 2015 [2015] QIRC 185

Re: In the matter of the making of Modern Awards - Common Provisions [2015] QIRC 194

APPEARANCES:

Mr P. Patmore and Mr B. Fletcher-Wode, of the State of Queensland (Queensland Health)
 Mr B. Watson, of The Australian Workers' Union of Employees, Queensland
 Ms L. Booth, of the Queensland Nurses' Union of Employees
 Mr R. Rule, of Together Queensland, Industrial Union of Employees
 Mr D. Peverill, of United Voice, Industrial Union of Employees, Queensland

Decision

- [1] On 31 October 2015 this Full Bench delivered a decision in *Re: Variation and renaming of a modern award - Health Practitioners and Dental Officers (Queensland Health) Award - State 2015*¹ wherein we advised that we were not prepared to vary and rename this award until such time as the Full Bench constituted to hear and determine certain "generic provisions" in Queensland public sector modern awards had decided those issues.
- [2] On 13 November 2015 in *Re: In the matter of the making of Modern Awards - Common Provisions*² another Full Bench of the Queensland Industrial Relations Commission (Commission) delivered its decision on certain "generic provisions" which were raised with the parties during the course of the hearing in this matter. We are therefore now in a position to determine the matter before us.

¹ *Re: Variation and renaming of a modern award - Health Practitioners and Dental Officers (Queensland Health) Award - State 2015* [2015] QIRC 185.

² *Re: In the matter of the making of Modern Awards - Common Provisions* [2015] QIRC 194.

- [3] Following the release of the decision in *Re: In the matter of the making of Modern Awards - Common Provisions* directions were issued on 13 November 2015 giving the parties until 17 November 2015 to provide further written submissions should they so wish.
- [4] Prior to the hearing on 8 October 2015 the Full Bench received written submissions from the State of Queensland (Department of Health) and Together Queensland, Industrial Union of Employees (Together Queensland). On 2 October 2015, the Queensland Nurses' Union of Employees (QNU) and The Australian Workers' Union of Employees, Queensland (AWU) advised that both organisations supported the written submission of Together Queensland, and, on 6 October 2015, United Voice, Industrial Union of Employees, Queensland (United Voice) also indicated its support for Together Queensland's written submission.
- [5] Whilst the Referral from Deputy President Bloomfield dated 25 September 2015 had attached to it an Exposure Draft Version 2.2, the parties had continued to confer with the AMOD Team subsequent to that Referral. At the time of hearing, the Full Bench had before it Exposure Draft Version 2.5 and that is the version of the Exposure Draft to which we refer in this decision.
- [6] At the conclusion of the hearing on 8 October 2015 a number of matters were identified for further consideration and the parties were given until 16 October 2015 to provide the Full Bench with further submissions. Both the State of Queensland (Queensland Health) and Together Queensland provided the Full Bench with written submission on all matters other than the "generic provisions" which were to be referred to a Full Bench. As a result of the Further Directions Order issued on 13 November 2015, the Full Bench received further submissions on 17 November 2015 from State of Queensland (Department of Health) and Together Queensland. Correspondence was also received on 17 November 2015 from the QNU, the AWU and United Voice indicating support for the written submissions of Together Queensland.
- [7] Those Clauses requiring further consideration by the Full Bench are dealt with below.

Clause 8.4 – Probationary employment

- [8] At the hearing Together Queensland objected to the inclusion of Clause 8.4 as the provision was not included in the pre-modernised *District Health Services Employees Award - State 2012* which formed the basis for the award entitlements of health practitioners and dental officers before the making of the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014*. The Department of Health submits that clause 4.2.2 of the pre-modernised *District Health Services Employee's Award - State 2012* contained probationary provisions. The Department of Health submits that the inclusion of such a provision provides clarity to the employment arrangements for employees and, as such, it is an appropriate inclusion in a modern award.
- [9] It is noted that in Together Queensland's written submission filed 17 November 2015 it withdraws its objection to Clause 8.4 of the proposed award.

[10] The Full Bench has decided to retain Clause 8.4 of the proposed modern award in the terms outlined in the Exposure Draft. It is appropriate that the modern award deal with the issue of probation and that employees are not required to go to legislation or other documentation to become aware of the probationary provisions applying to them as employees.

Clause 15(h)(i) – Ordinary Hours of Duty

[11] Clause 15.1(h)(i) of the Exposure Draft provides:

"(h) rostered days off - where work is performed on other than a Monday to Friday basis

(i) Unless prescribed elsewhere in this Award, all employees shall be entitled to not less than two whole consecutive rostered days off duty each week.

(ii) In lieu of two whole rostered days off in each week, an employee may be allowed in each fortnightly period either one rostered day off in one week and three consecutive rostered days off in the other week, four consecutive rostered days off or two groups of two consecutive rostered days off."

[12] The Full Bench sought clarification of the term "whole" in both Clause 15(h)(i) and (ii) of the Exposure Draft. Mr Patmore for the Department of Health advised the Full Bench that it meant the "entire day" i.e. they "should finish at midnight so that they have the whole rostered day off". In its written submission, the Department of Health submits that the term "whole" is consistent with the wording of the underpinning pre-modernised award at clause 6.6.1 of the *District Health Services Employees' Award - State 2012*.

[13] The Department of Health maintains its support for the inclusion of the word "whole" in Clause 15(h) of the Exposure draft as it would maintain the *status quo* and would not introduce new considerations to what are accepted rostering practices. A similar provision exists in the pre-modernised award covering nurses and midwives.

[14] The Department of Health does however acknowledge that there "may be a degree of ambiguity in relation to the application of the provision for those shifts that travers midnight" but submits that the intention is for staff to have two "clear" days off work.

[15] Together Queensland submits that as there has not been a history of disputation around the word "whole" the term must be clearly understood in its current context. Thus Together Queensland submits that no amendment to Clause 15.1(h)(i) and (ii) should be made.

[16] The Full Bench finds the inclusion of the word "whole" in Clause 15.1(h)(i) and (ii) of the Exposure Draft to be ambiguous and has decided to define the word "day" in Clause 15.1(h) as follows:

"For the purposes of clause 15.1(h), **day** means a period from midnight on one day until midnight on the following day".

[17] The word "whole" will thus be deleted from Clause 15.1(h)(i) and (ii) of the Exposure Draft.

Clause 15.5(b) and (c) – Payment for working ordinary hours - shift workers

[18] The Full Bench noted that in Clause 15.5(b) and (c) the time is referred to as "8.30pm" whereas the twenty-four hour clock is used elsewhere in the proposed award. There is no objection to amending those times to "2030" where they appear and the Full Bench has decided to amend the proposed award accordingly.

Clause 19.2(a) – Additional leave

[19] The Exposure Draft had a reference in Clause 19.2(a) to "15.5(ec)(iii)". The number "15.5(ec)(iii)" will be deleted and replaced with the number "15.5(e)(iii)". There was no opposition to this amendment.

Clause 26 – Travelling and relieving expenses

[20] Queensland Health sought to amend the terms of the Note in Clause 26 of the proposed award. After debate on the terms of the Note it appeared to the Full bench that the concerns of the Department of Health were more about managing the travelling and relieving expenses than the award provision. As such the Full Bench has decided to retain the wording of the Note as contained in the proposed award.

Title of Schedule 5

[21] Schedule 5 of the proposed modern award is titled "Directives Extended to Employees Covered by this Award". The Full Bench expressed concern about the directives being extended to employees covered by the Award. The Department of Health was supportive of an amendment to the proposed modern award and Together Queensland made no written submission on the matter.

[22] In those circumstances the Full Bench has decided to delete the current heading to Schedule 5 of the proposed award and replace it with "Directives Which Apply to Employees Covered by this Award (Clause 4.2)". With the change to the heading of Schedule 5 consequent amendments will be made to the following:

- the proposed heading to S5.1 of "Directives extended by the operation of Schedule 3 of the *Public Service Regulation 2008*" will be amended to "Directives which apply by the operation of Schedule 3 of the *Public Service Regulation 2008*"; and
- the proposed heading to S5.2 of "Directives applying as a term of this Award" will be amended to "Directives which apply as a term of this Award"; and

[23] The Full Bench has decided to recast Clause 4.2 to clarify the effect of Schedule 5 in the proposed award. We understand that a similar recasting of that clause will apply in other Queensland health sector modern awards. We have therefore inserted into this

proposed award Clause 4.2 in its new form and consequently have deleted the sentence under the heading in S5.2 of the proposed award.

- [24] Given the Full Bench decision in *Re: In the matter of the making of Modern Awards - Common Provisions* the Full Bench has decided to retain Clause 7 in the form contained in the proposed modern award.

Conclusion

- [25] The Full Bench will vary the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* in the manner outlined in the Exposure Draft Version 2.5 subject to the amendments made to those provisions as discussed in paragraphs [7] to [24] of this decision. The Full Bench is satisfied that the proposed award complies with the requirements of the Act in relation to modern awards, is consistent with the statutory objects of the award modernisation process and meets the requirements of the Minister's Consolidated Request.

- [26] For the reasons set out above, the Full Bench makes the following order:

That the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* be varied by:

- (a) deleting the numerals "2014" from the title and inserting in lieu thereof "2015"; and
- (b) deleting clauses 1 to 29 and Schedules 1 to 4 and inserting in lieu thereof the Clauses and Schedules appearing in the retitled award released concurrently with this decision.