

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: variation of the Queensland Public Service Officers and Other Employees Award – State 2015 [2020] QIRC 178*

PARTIES: **State of Queensland (Office of the Public Guardian)**
(Applicant)

v

Together Queensland, Industrial Union of Employees
(First Respondent)

and

Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District
(Second Respondent)

and

Australian Maritime Officers Union, Queensland Union of Employees
(Third Respondent)

and

Queensland Nurses and Midwives' Union of Employees
(Fourth Respondent)

and

The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees
(Fifth Respondent)

CASE NO: MA/2020/21

PROCEEDING: Application to vary a modern award

DELIVERED ON: 13 October 2020

HEARING DATE: 13 October 2020

MEMBER: Hartigan IC

HEARD AT: Brisbane

ORDER: **1. The application is granted.**

2. Orders are made in the terms of pages 9 - 14 of these reasons.

CATCHWORDS: INDUSTRIAL LAW – VARIATION OF A MODERN AWARD – application to vary a modern award

LEGISLATION: *Industrial Relations Act 2016* (Qld) s 141, s 147

APPEARANCES: Ms C Toy, of Crown Law for the Applicant

Ms N Vigor, for the First Respondent

Reasons for Decision

- [1] The Office of the Public Guardian ("the Applicant") applies, pursuant to s 147 of the *Industrial Relations Act 2016* ("IR Act"), to vary a modern award, the *Queensland Public Service Officers and Other Employees Award – State 2015* ("the Award").
- [2] The Award applies to employees who are, *inter alia*, engaged in the public sector of the State of Queensland pursuant to activities defined in cl 4.1(a)(i)(A)-(H) and whose salaries or rates of pay are fixed by the Award.
- [3] The purpose of the proposed amendments is to widen the coverage of the Award to include community visitors employed by the Applicant and provide for specific employment conditions for those employees.

The variations sought

- [4] The proposed amendments to vary the Award were referred to in the affidavit of Ms Shayna Smith, Public Guardian, filed on 18 September 2020 and may be summarised, as follows:
- (a) the inclusion of the position of community visitors, who are employed by the Applicant within the Award;
 - (b) the inclusion of a specific minimum engagement for casual community visitors of one hour;
 - (c) the inclusion of hours of work to include time spent travelling in the course of duties and time spent travelling to and from their residence to perform their duties; and
 - (d) the inclusion or standardised spread of ordinary hours for community visitors to be Monday to Friday, 0600 to 2200.
- [5] The variations sought were provided to the Commission by the Applicant¹ in the form of a draft consent order, in the following terms:

Orders Sought

1. That pursuant to section 147(2)(b) of the *Industrial Relations Act 2016*, the Commission exercise its power to vary the *Queensland Public Service Officers and Other Employees Award – State 2015*, as follows:
2. By deleting clause 2 and inserting the following in lieu thereof:

2. Operation

This Award, made on 31 October 2015, operates from:

- 12 January 2016 – for employees covered by the *Office of the Information Commissioner – Certified Agreement 2015*;
- 10 March 2016 – for employees covered by the *Maritime Safety Queensland Maritime Operations Certified Agreement 2015*;
- 16 May 2016 – for employees covered by the *QFleet Certified Agreement 2016*;
- 1 June 2016 – for employees covered by the *State Government Entities Certified Agreement 2015*;

¹ Application dated 18 September 2020, Attachment A.

- 30 September 2016 – for employees covered by the *State Government Security Certified Agreement 2016*;
 - 5 October 2016 – for Nurses employed by the Department of Education covered by the *Nurses and Midwives (Queensland Health and Department of Education and Training) Certified Agreement (EB9) 2016*;
 - 9 February 2017 – for employees covered by the *Transport and Main Roads Enterprise Bargaining Certified Agreement 2016*;
 - 15 January 2018 – for employees of National Injury Insurance Agency (Queensland);
 - 31 August 2018 – for employees of Trade and Investment Queensland; and
 - [On date to be inserted, subject to order 9 of these orders] – for employees appointed pursuant to section 109(1)(a), (b) or (c) of the *Public Guardian Act 2014*.
3. By varying clause 3, to include after the term "Commission" and before the term "continuous shift work" the following:
- Community Visitors** means employees appointed pursuant to section 109(1)(a), (b) or (c) of the *Public Guardian Act 2014*.
4. By varying clause 4.1(a)(i)(H) to remove the word "and" and replace it with the word "or".
5. By varying clause 4.1(a)(i), to include after clause 4.1(a)(i)(H) the following:
- (I) appointed pursuant to section 109(1)(a), (b) or (c) of the *Public Guardian Act 2014*.
6. By deleting clause 8.3(d) and inserting the following in lieu thereof:
- (d) Each casual, engagement stands alone with a minimum payment as for 2 hours' work, or other minimum payment as described in the table below, to be made in respect to each engagement:

Department, classification, group or area	Minimum engagement per day
(i) Department of Agriculture and Fisheries <ul style="list-style-type: none"> ○ casual Plant Health Inspectors 	1 hour, for actual work performed on inspections
(ii) Department of Child Safety, Youth and Women <ul style="list-style-type: none"> ○ Convenors – Youth Justice Conferencing 	Where the work performed relates to telephone calls and administrative work associated with ongoing conferences with clients, such work will be remunerated at the

	appropriate rate based on the actual time worked.
(iii) Department of Justice and Attorney-General:	
○ Supreme and District Court Bailiffs	4 hours
(iv) <u>Office of the Public Guardian:</u>	
○ <u>Community Visitors</u>	<u>1 hour</u>

7. By deleting the table at clause 15.3(a) and inserting the following in lieu thereof:

Department, classification, group or area	Spread of ordinary hours
(i) Crime and Corruption Commission: <ul style="list-style-type: none"> • all employees 	0700 to 1800, Monday to Friday
(ii) Department of Agriculture and Fisheries: <ul style="list-style-type: none"> • Queensland Boating and Fisheries Patrol <ul style="list-style-type: none"> ○ all employees up to and including district managers (but excluding administrative officers, regional managers and the superintendent) ○ casual plant health inspectors 	0000 to 2400, Monday to Sunday 0000 to 2400, Monday to Sunday
(iii) Department of Child Safety, Youth and Women: <ul style="list-style-type: none"> • Convenors – Youth Justice Conferencing 	0600 to 1800, Monday to Sunday
(iv) Department of Education: <ul style="list-style-type: none"> • Community participation officers • Runaway Bay Sports and Leadership Excellence Centre: <ul style="list-style-type: none"> ○ Reception staff ○ Massage therapists 	0600 to 2100, Monday to Friday 0500 to 2100 Monday to Friday 0600 to 2100, Saturday and Sunday 0500 to 1200, Monday to Friday 0600 to 1730 Saturday 0600 to 1230 Sunday
(v) Department of Environment and Science <ul style="list-style-type: none"> • Protection and services staff, Queensland Art Gallery 	0600 to 1800, Monday to Sunday

Department, classification, group or area	Spread of ordinary hours
<ul style="list-style-type: none"> • Visitor services officers, information officers and education assistants, Queensland Museum • Gallery services officer, Queensland Art Gallery • Learning Officer, Sciencentre, Queensland Museum 	<p>0600 to 1800, Monday to Sunday</p> <p>0600 to 1800, Monday to Sunday</p> <p>0600 to 1800, Monday to Sunday</p>
<p>(vi) Department of Natural Resources, Mines and Energy:</p> <ul style="list-style-type: none"> • Senior magazine keeper • Assistant magazine keeper • Explosives reserve keeper 	<p>0600 to 1800, Monday to Sunday</p> <p>0600 to 1800, Monday to Sunday</p> <p>0600 to 1800, Monday to Sunday</p>
<p>(vii) Department of Justice and Attorney-General:</p> <ul style="list-style-type: none"> • Supreme and District Court bailiffs 	<p>0830 to 1730, Monday to Friday</p>
<p>(viii) Department of State Development, Manufacturing, Infrastructure and Planning:</p> <ul style="list-style-type: none"> • Sales information officers, Economic Development Queensland 	<p>0600 to 1800, Monday to Sunday</p>
<p>(ix) <u>Office of the Public Guardian</u></p> <p style="text-align: center;"><u>Community Visitors</u></p>	<p><u>0600 to 2200, Monday to Friday</u></p>
<p>(x) Public Safety Business Agency:</p> <ul style="list-style-type: none"> • Technical officers (TO2, TO3 and TO4) and Technical assistants (TO1), who were previously employed in the former Department of Community Safety, engaged in Emergency Response Systems, Frontline Communications and Response, Frontline and Digital Services 	<p>0730 to 1605, Monday to Friday</p>
<p>(xi) Queensland Building and Construction Commission:</p> <ul style="list-style-type: none"> • all employees 	<p>0700 to 1830, Monday to Friday or other spread of hours or days (i.e. Saturday and/or Sunday) agreed in writing with the majority of employees concerned</p>
<p>(xii) Queensland Corrective Services</p> <ul style="list-style-type: none"> • Visits processing officers (Corrective Services) 	<p>0600 to 1800, Monday to Sunday</p>

Department, classification, group or area	Spread of ordinary hours
(xiii) Queensland Fire and Emergency Services: <ul style="list-style-type: none"> • State emergency services staff 	0600 to 2200, Monday to Sunday

8. By inserting after Schedule 1 – Section 4 – Queensland Fire and Emergency Services (QFES) a new Section 5 as follows:

Schedule 1 – Section 5 – Office of the Public Guardian

S1.5.1. Community Visitors

The following conditions apply to Community Visitors (as appointed pursuant to section 109(1)(a), (b) or (c) of the *Public Guardian Act 2014*) engaged by the Office of the Public Guardian.

S1.5.1.1 – Hours of Work

A Community Visitor's hours of work will include time spent travelling in the course of their duties, including time spent travelling to and from their usual place of work (which may be their home); and will be paid at the applicable rate.

Time spent travelling as part of the Community Visitor's hours of work is included for the purpose of calculating the minimum daily engagement in clause 8.3(d) and attracts the motor vehicle allowance at clause 13.8 of this award.

9. The variations to the Award take effect on a date as declared by the Commission.

- [6] Together Queensland consents to the variations to the Award sought by the Applicant and, further, consents to the draft orders that are sought to be made.

Consideration

- [7] The role of community visitor is not currently covered by the provisions of the Award or any other modern award or collective agreement in the Queensland Industrial Relations System. The variations seek to amend the Award to include community visitors who are employed by the Office of the Public Guardian be covered by the Award and provide for specific entitlements for employees who perform the role.
- [8] Chapter 3 of the IR Act provides for the exercise of powers with respect to modern awards. Section 147 of the IR Act falls within Chapter 3. Section 147 of the IR Act provides that the Commission may make or vary a modern award on its own initiative or by application to provide for "fair and just employment conditions".
- [9] Section 141 of the IR Act requires, that in exercising its powers pursuant to Chapter 3, that the Commission must ensure a modern award:

- (a) provides for fair and just wages and employment conditions that are at least as favourable as the Queensland Employment Standards;² and
- (b) generally reflects the prevailing employment conditions of employees covered, or to be covered, by the award.³

[10] I am satisfied that the variations sought by the Applicant and consented to by Together Queensland, would ensure that the Award continues to provide "fair and just employment conditions" and ensures that the Award generally reflects the prevailing employment conditions of employees covered by the Award. In this respect, the amendments seek to widen the coverage of the Award to include the community visitors employed by the Office of the Public Guardian and provide specific employment conditions for that role in circumstances where community visitors are not currently covered by any industrial instrument in the Queensland Industrial Relations Commission.

[11] I am satisfied that the purpose of the amendments includes to simplify the Award, to ensure consistency and fairness of entitlements to employees covered by the Award and to properly reflect changes to the type of work and the requirements to work in the industry.

[12] I grant the application and make the necessary orders to vary the Award.

² *Industrial Relations Act 2016* (Qld) s 141(1)(a).

³ *Ibid* s 141(1)(b).

Order

1. That pursuant to section 147(2)(b) of the *Industrial Relations Act 2016*, the Commission exercise its power to vary the *Queensland Public Service Officers and Other Employees Award – State 2015*, as follows:

- (a) By deleting clause 2 and inserting the following in lieu thereof:

2. Operation

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- 9 February 2017 – for employees covered by the *Transport and Main Roads Enterprise Bargaining Certified Agreement 2016*;
- 15 January 2018 – for employees of National Injury Insurance Agency (Queensland);
- 31 August 2018 – for employees of Trade and Investment Queensland; and

- **13 October 2020 – for employees appointed pursuant to section 109(1)(a), (b) or (c) of the *Public Guardian Act 2014*.**
- (b) **By varying clause 3, to include after the term "Commission" and before the term "continuous shift work" the following:**
- Community Visitors means employees appointed pursuant to section 109(1)(a), (b) or (c) of the *Public Guardian Act 2014*.**
- (c) **By varying clause 4.1(a)(i)(H) to remove the word "and" and replace it with the word "or".**
- (d) **By varying clause 4.1(a)(i), to include after clause 4.1(a)(i)(H) the following:**
- (I) **appointed pursuant to section 109(1)(a), (b) or (c) of the *Public Guardian Act 2014*.**
- (e) **By deleting clause 8.3(d) and inserting the following in lieu thereof:**
- (d) **Each casual, engagement stands alone with a minimum payment as for 2 hours' work, or other minimum payment as described in the table below, to be made in respect to each engagement:**

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	the appropriate rate based on the actual time worked.
(iii) Department of Justice and Attorney-General: <ul style="list-style-type: none"> ○ Supreme and District Court Bailiffs 	4 hours worked
(iv) Office of the Public Guardian: <ul style="list-style-type: none"> ○ Community Visitors 	1 hour

- (f) By deleting the table at clause 15.3(a) and inserting the following in lieu thereof:

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(xiii) Queensland Fire and Emergency Services: <ul style="list-style-type: none"> • State emergency services staff 	0600 to 2200, Monday to Sunday

- (g) By inserting after Schedule 1 – Section 4 – Queensland Fire and Emergency Services (QFES) a new Section 5 as follows:

Schedule 1 – Section 5 – Office of the Public Guardian

S1.5.1. Community Visitors

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Time spent travelling as part of the Community Visitor's hours of work is included for the purpose of calculating the minimum daily engagement in clause 8.3(d) and attracts the motor vehicle allowance at clause 13.8 of this award.

- (h) I declare that the variations to the Award take effect on 13 October 2020.