

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: Making of a modern award - Queensland Health Framework Award - State 2015* [2015] QIRC 187

PARTIES: **State of Queensland (the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships)**

State of Queensland (Department of Health)

Queensland Nurses' Union of Employees

Together Queensland, Industrial Union of Employees

United Voice, Industrial Union of Employees, Queensland

Australian Workers' Union of Employees Queensland

CASE NO: MAP/2015/3

PROCEEDING: Making of a modern award

DELIVERED ON: 3 November 2015

HEARING DATE: 10 September 2015 and 28 October 2015

MEMBERS: Deputy President O'Connor
Deputy President Kaufman
Industrial Commissioner Neate

ORDERS:

1. That the *Queensland Health Framework Award – State 2015* be made pursuant to section 140CE(1)(a) of the *Industrial Relations Act 1999* (Qld) (the Act) and shall operate from 31 October 2015 in the form appended to this Order and shall apply subject to section 824 of the Act.
2. That the *Queensland Health Framework Award – State 2012* be repealed on and from 31 October, subject to the provisions of section 824 of the Act.

- CATCHWORDS:** MAKING OF A MODERN AWARD - Section 140C(1) of the *Industrial Relations Act 1999* - request from the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships – *Queensland Health Framework Award – State 2015* - Modern Award made.
- CASES:** *Industrial Relations Act 1999*, Chapter 5, Division 2, ss 140BA, 140BB, 140C(1), 140CE, 140D, 824
- Re: Making of a modern award - Queensland Public Service Officers and Other Employees Award - State 2015* [2015] QIRC 188
- APPEARANCES:** Mr J.E. Murdoch QC, Counsel instructed by Crown law for the State of Queensland (the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships)
- Mr A. Herbert, Counsel instructed by Mr M. Moy of McCullough Robertson Lawyers for the State of Queensland (Department of Health), part of hearing
- Mr M Moy of McCullough Robertson Lawyers for the State of Queensland (Department of Health), part of hearing
- Ms L. Booth for Queensland Nurses' Union of Employees
- Mr R. Rule for Together Queensland, Industrial Union of Employees
- Mr B. Peverill for United Voice, Industrial Union of Employees, Queensland
- Mr B. Watson for Australian Workers' Union of Employees, Queensland

Decision

- [1] In June 2015, the Queensland Industrial Relations Commission ("the Commission") recommended the award modernisation process following the passing of amendments to the *Industrial Relations Act 1999* ("the Act").

- [2] Part 8 of Chapter 5 "Modernisation of awards" as well as Chapter 5A, "Modern awards", were inserted into the Act by the *Industrial Relations (Restoring Fairness) and Other Legislation Act 2015* ("the Amending Act"). The Amending Act introduces a regime which permits the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships ("the Minister") to request the Commission to undertake a process of modernising awards. Section 140C empowers the Minister to give the Commission an award modernisation request ("Request") to carry out an award modernisation process.
- [3] The Amending Act, amongst other things, amended s 140D of the Act "Modern award objectives", by deleting the requirement that the Commission have regard to "financial considerations" as defined in that section. It also amended the principal object of the Act by deleting s 3(p) which required that when wages and employment conditions are determined by arbitration and the matter involved the public sector, the financial position of the State, the relevant public sector entity and the State's fiscal strategy were to be taken into account.
- [4] Section 841 of the Amending Act requires the Commission to review a relevant modern award and vary it if the Minister gives the Commission a variation notice under s 140CA. Section 140CA(1) requires the Commission to remove certain provisions which had been required to be inserted prior to their repeal as well as to include certain provisions that had been contained in relevant pre-modernisation awards.
- [5] On 17 July 2015 the Minister, pursuant to s 140CA(1), issued a variation notice and made a Consolidated Request.
- [6] Section 140BA of the Act sets out the object of modernising awards as follows:

"Section 140BA Object of modernising awards

- (1) The principal object of this part is to provide for the modernisation of awards so they—
- (a) are simple to understand and easy to apply; and
 - (b) together with the Queensland Employment Standards, provide for a fair minimum safety net of enforceable conditions of employment for employees; and
 - (c) are economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and
 - (d) are in a form that is appropriate for a fair and productive industrial relations system; and
 - (e) result in a certain, stable and sustainable modern award system for Queensland."
- [7] Section 140BB of the Act sets out the Commission's award modernisation function, as follows:

"Section 140BB Commission's award modernisation function

- (1) The functions of the commission include carrying out a process (*award modernisation process*) to reform and modernise pre-modernisation awards.
- (2) In performing its functions under this part, the commission must have regard to the following factors -
 - (a) promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;
 - (b) the need to help prevent and eliminate discrimination in employment;
 - (c) protecting the position in the labour market of young people, employees engaged as apprentices or trainees and employees with a disability;
 - (d) the needs of low-paid employees;
 - (e) the need to promote the principle of equal remuneration for work of equal value;
 - (f) the need to help employees balance their work and family responsibilities effectively and to improve retention and participation of employees in the workforce;
 - (g) the safety, health and welfare of employees;
 - (h) the Queensland minimum wage;
 - (i) the desirability of reducing the number of awards operating under this Act; and
 - (j) the representation rights of organisations and associations under this Act."

[8] Section 140D of the Act sets out the modern award objectives as follows:

"140D Modern awards objectives

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

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

[9] In accordance with Chapter 5, Part 8, Division 2 of the Act and the Consolidated Request under s 140C(1), the Award Modernisation Team ("AMOD Team") of the

Commission prepared an Exposure Draft of a proposed *Queensland Health Framework Award - State 2015* ("Proposed Award").

- [10] The State of Queensland (Department of Health) provided a draft Proposed Award to the AMOD Team on 17 August 2015. The draft Proposed Award was presented as a consent position between the Employer (the State of Queensland) and industrial parties ("the consent Proposed Award").
- [11] On 31 August 2015, Deputy President Bloomfield referred a finalised version of the Proposed Award to the Vice President for referral to a Full Bench of the Commission.
- [12] The Vice President referred the Proposed Award to this Full Bench for hearing and the matter was listed and heard on 10 September 2015.
- [13] The following three objections to the finalised version of the Proposed Award were raised in submissions:
1. the non-inclusion of references to directives in the Award;
 2. the non-inclusion of Right of Entry provisions; and
 3. the non-inclusion of references to Queensland Health policies.
- [14] In dealing with the objections concerning directives and right of entry, the Full Bench has adopted a position consistent with its approach in *Re: Making of a modern award - Queensland Public Service Officers and Other Employees Award - State 2015*¹.
- [15] At the hearing on 10 September 2015, the Full Bench, after considering the submissions filed by the industrial parties, including the referral advice to the Full Bench together with the finalised version of the Exposure Draft, and the consent Proposed Award, formed the view that further submissions should be sought from the parties in relation to how the proposed *Queensland Health Framework Award - State 2015* meets the provisions of the Act, in particular those aspects of the Act relating to the modernisation of awards.
- [16] The Full Bench reconvened on 28 October 2015, at which time the Minister intervened pursuant to s 322 of the Act.
- [17] As we said at the conclusion of the hearing, we have grave reservations as to whether the contents of the consent Proposed Award can properly be included in a modern award given the statutory regime governing modern awards.
- [18] All the industrial parties submitted that the consent Proposed Award conforms with the requirements of the Act and the Consolidated Reference. The Minister submitted that we have power to make the award, but did not specifically address its content.
- [19] We were advised that negotiations for the making of several agreements are at a critical stage. In the circumstances, we decided to make an award as an interim measure, in order to permit the certified agreements to be made, the making of which is dependent upon the existence of a relevant modern award.

¹ *Re: Making of a modern award - Queensland Public Service Officers and Other Employees Award - State 2015* [2015] QIRC 188.

- [20] There is a further imperative. Under the terms of the Consolidated Request we are required to make the award by 31 October 2015.
- [21] It is impossible for us to properly receive and consider submissions on its contents in that timeframe. We were only provided with the myriad of policies that become incorporated into the award by reference during the hearing on 28 October 2015.
- [22] In deciding to make the interim modern award it is clear that we have not made any final determination as to whether at least some of its contents conform with the requirements of the Act.
- [23] Notwithstanding the matters raised above, the Full Bench is prepared to make an award in the terms of the Queensland Health Department's consent Proposed Award, version 3, dated 8 September 2015, as an interim award for the sole purpose of enabling certified agreements to be made.
- [24] The Full Bench proposes to include a sunset clause in the interim modern award to take effect on 30 June 2016.
- [25] The *Queensland Health Framework Award - State 2012* is an award of the Commission which has current application and will be repealed upon the making of any modern award subject to the provisions of s 824 of the Industrial Relations Act 1999.

Orders

- [26] According, the Full Bench, and by consent of the parties, makes the following orders:
1. That the *Queensland Health Framework Award – State 2015* be made pursuant to section 140CE(1)(a) of the *Industrial Relations Act 1999* (Qld) (the Act) and shall operate from 31 October 2015 in the form appended to this Order and shall apply subject to section 824 of the Act.
 2. That the *Queensland Health Framework Award – State 2012* be repealed on and from 31 October, subject to the provisions of section 824 of the Act.