QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*Re: In the matter of the making of Modern Awards - Queensland Local Government Industry Award - State 2017* [2017] QIRC 009
PARTIES:	Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland. 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 Plumbers & Gasfitters Employees' Union Queensland, Union of Employees The Electrical Trades Union of Employees Queensland Queensland Nurses' Union of Employees The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees Transport Workers' Union of Australia, Union of Employees (Queensland Branch) United Voice, Industrial Union of Employees, Queensland Queensland Independent Education Union of Employees Local Government Association of Queensland Ltd
CASE NO:	MAP/2016/15
PROCEEDING:	Making of a modern award
DELIVERED ON:	28 February 2017
HEARING DATE:	5 December 2016

HEARD AT:	Brisbane
MEMBERS:	Deputy President O'Connor Deputy President Swan Industrial Commissioner Thompson
ORDERS:	**1. That the *Queensland Local Government Industry Award - State 2017* be made pursuant to s 140CE(1)(a) of the *Industrial Relations Act* 1999 and operate on and from 28 February 2017, subject to the provisions of s 824 of the Act.** **2. That the *Queensland Local Government Industry Award - State 2014* be repealed on and from 28 February 2017, subject to the provisions of s 824 of the Act.**
CATCHWORDS:	INDUSTRIAL LAW - AWARD MODERNISATION - MAKING OF A MODERN AWARD - Section 140C(1) of the *Industrial Relations Act* 1999 - Request from the Minister for Employment and Industrial Relations
CASES:	*Workplace Relations Act* 1996 (Cth) *Industrial Relations Act* 1999 ss 140BA, 140BB, 140CA(1), 140CE(1)(a), 140D, 273, 320(3), 824, 844 *Industrial Relations (Restoring Fairness) and Other Legislation Act* 2015 *Re: Variation and renaming of a modern award - Queensland Local Government Industry Award - State 2015* [2015] QIRC 186. *Matter of a Proposed Queensland Local Government Industry Award - State* 2015 [2016] ICQ 006 *Electrical Power Transmission Pty Ltd v Robinson* (1973) 2 QL 329 *Hardy v St Vincent's Hospital Toowoomba Ltd* [2000] 2 Qd R 19 *The Electricity Supply Industry (Salaried Employees) Award - State Electrical Engineering Award - State Mechanical Engineering Award - State Coach and Motor Body Building Industry*

and Farriers Award - State Engine Drivers Award - State [1984] 117 QGIG 229

APPEARANCES:

Mr N. Henderson of the Queensland Services Union.

Mr A. Borg of the Construction, Forestry, Mining & Energy Industrial Union of Employees, Queensland.

Ms K. Allen of the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (and speaking on behalf of the Plumbers & Gasfitters Employees' Union of Queensland, Union of Employees).

Ms K. Inglis of The Electrical Trades Union of Employees Queensland.

Ms K. Scott of The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees.

Ms K. Badke of the Queensland Nurses' Union of Employees.

Mr B. Watson of The Australian Workers' Union of Employees, Queensland.

Mr S. Blaney of the Local Government Association of Queensland Ltd.

DECISION

[1] On 31 October 2015 a differently constituted Full Bench of the Queensland Industrial Relations Commission ("the Commission") made orders, relying upon the award modernisation process contained in Part 8 of Chapter 5 of the *Industrial Relations Act* 1999 ("the Act"), varying the *Queensland Local Government Industry Award - State 2014* ("the Award").

[2] The history of the proceedings before the previous Full Bench is set out in their decision[1] which is repeated below:

> "[1] Part 8 of Chapter 5 'Modernisation of awards' as well as Chapter 5A, 'Modern awards', were inserted into the *Industrial Relations Act* 1999 (the Act) by Act No. 61 of 2013. The amending Act thereby introduces a regime which permits the Minister to request the Queensland Industrial Relations

[1] *Re: Variation and renaming of a modern award - Queensland Local Government Industry Award - State 2015* [2015] QIRC 186.

Commission (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.

[2] On 26 September 2014 following a Request from the then Attorney-General and Minister for Justice given in January 2014, a differently constituted Full Bench of this Commission made the *Queensland Local Government Industry Award - State 2014* (the 2014 Award).

[3] The Act was amended in 2015 by the *Industrial Relations (Restoring Fairness) and Other Legislation Act 2015* which 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 and the relevant public sector entity and the State's fiscal strategy were to be taken into account.

[4] The *Industrial Relations (Restoring Fairness) and Other Legislation Act* 2015 also inserted Part 20, *Transitional Provisions for Industrial Relations (Restoring Fairness) and other Legislation Amendment Act* 2015 in to the Act. Section 841 of the 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) [sic s 842(1)] requires the Commission to remove certain provisions which had been required to be inserted prior to their repeal by the Industrial Relations (Restoring Fairness) and Other Legislation Act 2015, as well as to include certain provisions that had been contained in relevant pre-modernisation awards.

[5] On 17 July 2015 the Treasurer and Minister for Employment and Industrial Relations (Minister), pursuant to s 140CA(1) issued a variation notice and made a Consolidated Request.

[6] A differently constituted Full Bench dealt with the Consolidated Request and the requirement of s 844 that the Commission consider an increase to the number of awards covering the Queensland local government industry (Excluding Brisbane City Council) ('Queensland local government industry'). That Full Bench declined to increase the number of awards governing the Queensland local government industry deciding that one award is appropriate.

[7] Following that decision, pursuant to the Consolidated Request, the Commission's award modernisation team (AMOD Team) conducted conferences with interested parties in an attempt to come to an agreed position in relation to amending the 2014 Award in conformity with the Consolidated Request. No agreement was reached and, on 10 September 2015, Deputy President Bloomfield referred the variation of the award to the Vice President who constituted this Full Bench to deal with the matter and to vary the 2014 Award in conformity with the Consolidated Request. The Referral included an Exposure Draft of a proposed new modern award for this Full Bench to consider."

[3] On 10 November 2015, an appeal against the Full Bench's decision was lodged in the Industrial Registry.

[4] The appeal concerned questions with respect to, among other things, the effect of the *Industrial Relations (Restoring Fairness) and Other Legislation Act* 2015 and the Minister's request made under the award modernisation provisions. The grounds of appeal were:

> "The appellants contend that the Full Bench erred in two ways:
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> (a) with respect to the capacity of the Minister to direct the Commission; and
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> (b) by misinterpreting the terms of the Consolidated Request and making a modern award in which there was a loss or reduction of entitlements compared to relevant pre-modernisation awards."

[5] In short, Martin J found that the previous Full Bench erred in its determination of the requirements of the Consolidated Request and, as a result, fell into error in the manner in which it proceeded to make the new award. The decision of the Full Bench was set aside and the matter was remitted to the Commission to be heard and determined according to law.

[6] On 20 July 2016, Deputy President O'Connor directed that the *Local Government Industry Award - State 2016* ("the Proposed Award") be referred back to the AMOD Team in order that further conciliation conferences be conducted with interested parties. It was further ordered that that the AMOD Team produce a further Draft Award for consideration by the parties and for a differently constituted Full Bench to hear and determine any outstanding issues about which the parties could not reach a consent position.

[7] The Commission recommenced the award modernisation process following the passing of amendments to the Act and the issuing of a variation to the existing Ministerial Request (Consolidated Request) on 17 July 2015. A new Consolidated Request was issued by the Honourable Grace Grace, Minister for Employment and Industrial Relations (the Minister) on 6 June 2016.

[8] In accordance with Chapter 5, Part 8, Division 2 of the Act (i.e. the award modernisation process provisions of the Act) and the Consolidated Request under s 140C(1) of the Act from the Minister, the AMOD Team of the Commission prepared an Exposure Draft of the Proposed Award.

Legislative Provisions

[9] The relevant provisions of the Act are:

> **"140BA Object of modernising awards**

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."

[10] Section 140BB of the Act sets out the Commission's Award Modernisation functions, as follows:

"**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.

(3) This section does not limit section 140D."

[11] Section 140D of the Act sets out the objects of the Modern awards, and further s 273 of the Act sets out the Commission's functions, 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."

"**273 Commission's functions**

(1) The commission's functions include the following -

(a) establishing and maintaining a system of non-discriminatory awards that, together with the Queensland Employment Standards, provide for a fair minimum safety net of enforceable conditions of employment for employees".

[12] The "Priority Awards" section of the Consolidated Request identifies the Award as a modern award made prior to the passage of the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act* 2015 which is to be reviewed and varied. It further identifies Schedule 1 as containing further requirements in relation to the review and variation of that Award.

Reconstituted Full Bench

[13] On 15 November 2016, Deputy President Bloomfield referred a final version of the Proposed Award to Deputy President O'Connor for the consideration of a Full Bench of the Commission.

[14] A substantial number of the terms of the Proposed Award were agreed between the parties, and the AMOD Team, however a number of areas of disagreement were left for determination by the Full Bench. The issues referred to the Full Bench were as follows:

1. Division 2, Section 1 - Administrative, Clerical, Technical, Professional, Community Service, Supervisory and Managerial Services

a. Clause 8.3.1 - Casual Conversion
b. Clause 13.2 and Schedule 2 - Locality Allowances
c. Clause 19.1 - Period of Annual Leave
d. Clause 19.4 - Annual Close Down (90 days' notice to be provided)
e. Clause 28 - Trade Union Training Leave

2. Division 3, Section 5 - Operational Services

a. Clause 19.3(b) - Annual Close Down

3. Division 4, Section 2 - Engineering and Electrical /Electronic Services

a. Clause 32 - Distant Work - other than if living in camp
b. Schedule 1 - Classifications - Engineering and Electrical/Electronic Services.

[15] Additionally, the clause relating to part-time work (Clause 8.2) found in Division 3 (Section 5) and Division 4 (Sections 1 and 2), whilst not listed in the referral from Deputy President Bloomfield, remained an issue about which all parties made submissions in anticipation of the hearing.

[16] We propose to deal with each of the areas of disagreement in turn.

Division 2 - Section 1 - Clause 8.3.1 - Casual Conversion

[17] The Local Government Association of Queensland Ltd (LGAQ) seeks the removal of clause 8.3.1 from Division 2, Section 1 of the Proposed Award. It does so on the follow basis:

- LGAQ argues that Queensland Councils were subject to specific transitional arrangements under the former *Workplace Relations Act* 1996 (Cth) which applied to employees bound to federal awards who were not trading corporations.

- The *Queensland Local Government Officers Award 1998* was a federal award operating under these transitional arrangements.

- Awards operating under Federal transitional arrangements could not include casual conversion provisions as these were non-allowable.

- The particular provisions under the Act creating a substitute state award (as a pre-modernisation of version of the *Queensland Local Government Officers Award 1998*) were reflective of the terms of the transitional award, which did not contain casual conversion.

- The Commission is not required to include a casual conversion provision under division to section 1 of the Proposed Award to comply with the Minister's request, nor is the inclusion of such provision consistent with the modern award objectives.

[18] The LGAQ submitted that the provisions as contained in the proposed Clause 8.3.1 of Division 2, Section 1 to the Modern Award should not be included on the basis that:

- it diminishes the capacity for Councils to ensure it can backfill positions and It maintain operational coverage where Councils seek to adopt a flexible modern work practices for its core workforce. The LGAQ noted that the reinsertion of many of the former provisions from pre-modernisation awards relating to part-time work will provide less flexibility to Councils than that which existed under the Award;

- from data obtained by LGAQ surveys of its members, Councils typically have very low levels of casual employment which has remained relatively static over time, hence in the LGAQ's submission the fundamental basis for a casual conversion provision is unwarranted in Queensland local government;

- the inclusion of casual conversion provisions has a propensity to lead to unfair outcomes in that Councils may seek to terminate the services of casual employees prior to the stated length of service after which they have would have a choice to convert to permanent work, in circumstances where that employment may have otherwise continued; and

- Councils, especially many remote Councils, do require the capacity to maintain control over casual employment, so as to allow flexibility to accommodate often unpredictable funding streams and associated workflow. A provision which allows casual employees complete discretion to convert to permanent employment on some representative basis of casual hours removes that necessary control.

[19] The LGAQ argues that the inclusion of casual conversion provisions not otherwise required by the Minister's request is generally inconsistent with the objectives set out under s 140 BA(c) of the Act. The LGAQ offers no further argument for exclusion of the provision.

[20] The Queensland Services, Industrial Union of Employees (QSU) supports the retention of the casual conversion clause as it existed in the *Queensland Local Government Offices' Award 1992* at clauses 17.12 - 17.15:

> "17.12 **Casual Conversion**
>
> This provision shall apply to a casual officer who has been engaged to work a sequence of periods of employment during a period of six months.
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> 17.13 A casual officer who has been engaged in accordance with subclause 17.13 shall, at the completion of six months service, have a right to elect to have their employment converted to full-time or part-time employment if it could be reasonably expected that their employment is to continue. The employer shall advise the officer in writing of their right

to elect to have their employment converted to full-time or part-time employment. The officer retains his or her right of election under this clause if the employer fails to comply this subclause.

17.14 For an officer who elects to convert shall be employed as either a part-time or full-time officer or calling to the pattern of ordinary arrows worked in the preceding six months period or otherwise by mutual agreement in writing.

17.15 An officer must not be engaged and reengaged to avoid any obligation under this award."

[21] The LGAQ rejected the submission of the QSU that the provision of a casual conversion clause was an industry standard. The QSU submitted that, in the past, all local government employees had access to casual conversion provisions but these provisions were excluded from awards under the *Workplace Relations Act* 1996 (Cth) and, referring to a 2008 decision of the Full Bench of the Australian Industrial Relations Commission,[2] the inclusion of casual conversion provisions in awards was extended from then on where the provisions were an industry standard.

[22] The casual conversion clause confers upon certain casual employees a right to elect "to have their employment converted to full-time or part-time employment if it could be reasonably expected that their employment is to continue."

[23] The inclusion of the proposed casual conversion clause in the Modern Award provides, at its simplest, an avenue for casual employees who have been employed for at least six months to request their employment be converted to full-time or part-time employment.

[24] The rationale behind its inclusion in the Modern Award is that if a Council has been employing a person regularly and systematically for more than a six month period of time, then that employee is not a true casual and should have the benefits of secure permanent employment such as sick leave, annual leave and redundancy pay.

[25] The conversion from casual to permanent employment is not, when considering the terms of the clause, to be regarded as automatic or compulsory.

[26] The insertion of the casual conversion clause in the Modern Award will also permit those employees for whom long term casual employment is preferable to maintain their status as casuals.

Division 2 - Section 1 - Clause 13.2 and Schedule 2 - Locality Allowances

[27] The QSU supports the inclusion of Mapoon Aboriginal Shire Council, Northern Peninsula Area Regional Council, Napranum Aboriginal Shire Council and Torres Strait Island Regional Council on the basis that each of the four Councils are in the industry of local government and in the geographic area where a locality allowance would apply. The inclusion of the four Councils is opposed by the LGAQ.

[2] [2008] AIRCFB 1000, [51].

[28] The LGAQ argues that there is no obligation under the Minister's request to include the four regional Councils. The Ministerial request relevantly provides that "…the Commission is to restore the provision of locality allowance and additional annual leave provisions where such provisions were available in the pre-modernisation award/s."

[29] The LGAQ's argument is premised upon the status of these Councils as a respondent to the *Queensland Local Government Officers Award 1998*.

[30] The LGAQ also submits that its objection to the provision of locality allowance to Cherbourg Aboriginal Shire Council (Cherbourg) is premised on the status of the former Cherbourg Community Council as a respondent to the *Queensland Local Government Offices Award 1998*.

[31] We accept that there is no obligation on the Full Bench under the Minister's request to restore locality allowances to employees at Cherbourg. For reasons set out elsewhere, we believe that the locality allowance ought to be granted to Cherbourg.

[32] Whilst we also accept that in respect of the Mapoon Aboriginal Shire Council, Northern Peninsula Area Regional Council, Napranum Aboriginal Shire Council and Torres Strait Island Regional Council, the Ministerial request imposes no obligation on the Commission to restore locality and additional annual leave provisions, it does raise something of a conundrum. The Commission, in its decisions, is governed by equity and good conscience.[3] It would seem contrary to that provision to exclude workers employed by Mapoon Aboriginal Shire Council, Northern Peninsula Area Regional Council, Napranum Aboriginal Shire Council and Torres Strait Island Regional Council from obtaining the benefits of additional annual leave and locality allowance. There appears to be no logical basis to do so. They are, by locality, entitled to the benefits. The mere fact that the Consolidated Request does not require it to be done is not a sufficient reason for them to be excluded.

Division 2 - Section 1 - 19.1 Period of Annual Leave

[33] The LGAQ seeks the removal of Napranum Aboriginal Shire Council from the five week leave table in Clause 19.1. Clause 19.1 provides:

> "Subject to clause 19.2, employees covered by this Section **are entitled to a period of annual leave based upon location** of their employment". (emphasis added)

[34] For the reasons advanced in paragraph [32] above, we see no logical reason why Mapoon Aboriginal Shire Council, Northern Peninsula Area Regional Council and Torres Strait Island Regional Council should not be entitled to five weeks leave. As clause 19.1 provides, the entitlement to a period of leave is "…based upon the location of their employment".

[35] For the reasons advanced above, the Full Bench is of the view that, in relation to the four Councils whose employees will become entitled by reason of this decision, are to be given the benefit of additional annual leave and a locality allowance as provided for under this Proposed Award. In addition, and mindful of the potential impact that these

[3] See: s 320(3) of the IR Act 1999.

changes may have bring upon what were formerly aboriginal community Councils, the Full Bench is of the view that arrangements ought to be put in place which sees the phased introduction of locality allowances and the setting of a prospective date from the introduction of annual leave.

[36] In the submissions before the Full Bench, the QSU was mindful of the cost implication that may be imposed upon a Council should the Commission adopt an approach which saw the four Councils granted the additional annual leave and the locality allowance. In order to mitigate against any adverse impact upon those Councils, it was submitted by the QSU that they would be amendable to a phasing in of both the locality allowance and the setting of a prospective date for the commencement of the provision dealing with annual leave.

[37] Accepting that the Full Bench's decision, particularly in regard to locality allowances may impose a financial impost on the named Councils, we are of the view that this Proposed Award should include a transitional provision that provides for the "phasing in" of the locality allowance in four increments over two years from 1 July 2017 and apply in full from 1 January 2019.

Division 2 - Section 1 - Clause 19.4 - Annual Close down (90 days' notice)

[38] The QSU submitted the pre-modernisation provision for six months' notice of an annual close down should be retained, opposing the approach taken by the AMOD team to provide for a standardised 90 days' notice and in opposition to the submission of the LGAQ. The Consolidated Request states that the Commission, in reviewing the provisions currently in the Award, "…must make certain the variation of the Award results in the reinstatement of allowances, other employee entitlements and conditions of employment of at least the same value as those which existed in the pre-modernisation award/s…".

[39] The referral to the Full Bench states that the six months' notice provision is not supported on the basis that the notice period across all relevant Divisions/Sections where a close down is likely have been standardised to a 90 day notice period. The AMOD Team further notes in the referral that the standardisation have been affected in reliance on s 140(D) of the Act.

[40] The QSU contends that the inclusion of the 90 day notice period is a reduction in the notice period provided for in the *Queensland Local Government Officers' Award 1998* and therefore inconsistent with the Consolidated Request.

[41] In the *Matter of a Proposed Queensland Local Government Industry Award - State 2015*[4] Martin J wrote:

> "[25] The language used in the first paragraph under the sub-heading 'Allowances and other provisions' does not require more than that the Commission give consideration to a review of allowances and, to that end, give consideration to restoring the provision of locality allowances where they were available in pre-modernisation awards. It does not mandate a particular result.

[4] *Matter of a Proposed Queensland Local Government Industry Award - State* 2015 [2016] ICQ 006.

[26] The direction given in the second paragraph is more detailed. It requires the Commission to review the consolidated and other allowances in the Award and then to ensure employee entitlements have not been reduced in comparison with the pre-modernisation awards. The word 'ensure' appears in a number of statutes, in particular, statutes concerning workplace health and safety. The accepted meaning of the word in those circumstances is to 'make certain' or 'make sure'[5]. It is also the meaning most often given to the word in the usual authoritative dictionaries.

[27] It follows, then, that the Commission is required to **make certain** that employee entitlements have not been reduced in comparison with the allowance arrangements in the pre-modernisation awards. **The term 'employee entitlement' is not defined in the Consolidated Request but the reference to comparing them to 'allowance arrangements' makes it clear that it concerns, at least, allowances.** That meaning should be adopted here." (emphasis added)

[42] The "Statement of Intent" section in the Consolidated Request contains these statements:

> "Award modernisation is **not intended to reduce or remove employee entitlements and conditions** from what is available in the pre-modernisation awards. Having regard to this, the Commission shall ensure wages and employment conditions continue to provide fair conditions in relation to the living standards prevailing in the community and what is afforded to employees and employers in the relevant pre-modernisation award/s." (emphasis added)

[43] The Consolidated Request when read as a whole focuses predominately on "employee entitlements" comparing them to "allowance arrangements" requiring the Commission to ensure the reinstatement of allowances, other employee entitlements at least the same value as those which existed in the pre- modernisation award.

[44] As such, the Full Bench takes the view that the Consolidated Request does not require the reinstatement of the provision of six months' notice of an annual close down in clause 19.4. The Full Bench accepts the approach of the AMOD Team to maintain consistency and standardise the provision across all Modern Awards and cognisant of s 140D of the Act, we support the retention of the current clause.

Division 2 - Section 1 - Clause 28 Union Training Leave

[45] In the matter of *The Electricity Supply Industry (Salaried Employees) Award - State Electrical Engineering Award - State Mechanical Engineering Award - State Coach and Motor Body Building Industry and Farriers Award - State Engine Drivers Award – State*,[6] the Commission found:

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[5] See *Electrical Power Transmission Pty Ltd v Robinson* (1973) 2 QL 329 per Matthews P, approved and adopted in *Hardy v St Vincent's Hospital Toowoomba Ltd* [2000] 2 Qd R 19, 22.

[6] *The Electricity Supply Industry (Salaried Employees) Award - State Electrical Engineering Award - State Mechanical Engineering Award - State Coach and Motor Body Building Industry and Farriers Award - State Engine Drivers Award - State* [1984] 117 QGIG 229, 231.

> "We accept in principle that within clearly defined limitations paid leave ought, where practicable, be available to employees to attend courses sponsored and conducted by the trade union training authority where the scope, content and level of the courses such as to contribute to a better understanding of industrial relations. Within the limitations envisaged, we believe that paid leave for such purposes should not be unreasonably refused, though we accept that circumstances will exist as would provide sound reasons to justify refusal to grant such leave. Should such reasons emerge upon an otherwise valid request for paid leave being made by an employee and supported by a relevant union of which he is a member, we would expect the parties immediately concerned to discuss all relevant aspects of the matter with a view to resolving any differences of opinion. We would not regard an objection in principle to trade union training as providing a valid reason for review refusal of paid leave, nor would we accept that a refusal to grant such leave would be justified merely because the employer was not entitled to select which of his employees should attend such courses or approve of selection so made. That is not to say that an employer should be precluded from offering constructive comment as to the suitability of an appointment for a particular course."

[46] Consistent with the reasoning of the Full Bench, we are of the view that provision should be made to include Trade Union Training for those Council employees covered by Division 2 of the Award.

[47] Accordingly, a new clause 28 should be inserted in Division 2 - Section 1 in the same terms as contained in in clause 28 of Division 3 and 4 of the Award.

Division 3 - Section 5 - Clause 19.3 (b) Annual Close Down

[48] The Australian Workers' Union of Employees, Queensland (AWU) opposes (with the support of the Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland [CFMEU]) the inclusion of 19.3(b) which allows an employer, with the consent of a majority of employees, to agree to have a second annual leave close down in any 12 month period.

[49] The AWU submissions noted they have no objection to clause 19.3(a) (i) and (ii) which were present in the existing pre-modernised award. However they do take exception to the inclusion by the AMOD team in the exposure draft of 19.3(b) which provides as follows:

> "…notwithstanding clause 19.3(a) where there is agreement between the employer and the majority of employees concerned, the employer may close down its operations or a section or sections thereof on one additional occasion in any 12 month period for the purposes of allowing additional annual leave for a period agreed with its employees."

[50] The LGAQ submits that there has always been the ability for the employer to have a second close-down of its operations and require employees, with notice, to take leave. The LGAQ submitted that there could be a benefit not only for the employer but also the employee.

[51] The Full Bench does not accept the submission of the AWU that the provision will be an impost on employees and further reduce an employee's ability to determine the timing of their annual leave entitlement. The Full Bench acknowledges the submissions of the AWU, but is of the view that clause 19.3(b) ought to be included.

Division 3 (Section 5) and Division 4 (Sections 1 and 2) - Clause 8.2 - Part-time

[52] The LGAQ seeks the following additional clauses be inserted in Clause 8.2 Division 3 - Section 5 as follows:

> "(c) By mutual agreement with their employer, a part-time employee may elect to work additional ordinarily hours above their regular hours, up to and including full-time equivalent hours. The additional hour so worked are to be taken into account in the pro rata calculation of all leave and other entitlements.
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> (ii) Any additional ordinary hours are to be treated as follows:
> (A) day workers - additional hours worked within the spread of ordinary hours prescribed in clause 15.3 are to be paid for at the ordinary hourly rate;
> (B) shift workers - to be paid for at the ordinary hourly rate, plus the applicable shift allowance."

[53] On the submission of the LGAQ, a similar provision was to be inserted in Clause 8.2 of Division 4 Section 1 and Clause 8.2 of Division 4 Section 2.

[54] It was the LGAQ's submission that the proposed amendments serve to simplify and clarify the process for *ad hoc* and mutually agreeable amendments to what would otherwise be part-time employees regular ordinary working hours. In their submission, the LGAQ argues that the amendments maintain a situation where a part-time employee may not agree to work additional hours and if directed to do so, to be paid at overtime rates where the employee works those additional hours. The proposed amendments would still see a worker being paid overtime in relation to additional agreed hours for any hours worked outside the spread of ordinary arrows and/or those which exceed the equivalent of a full-time employee.

[55] The Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (AMEPKU), Plumbers & Gasfitters Employees' Union Queensland, Union of Employees (PGEU) and The Electrical Trades Union of Employees Queensland (ETU) advised that they no longer objected to the inclusion of 8.2 Division 4. The QSU advised the Full Bench that its previous objection had been withdrawn.

[56] The AWU raised an objection in relation to Clause 8.2 of Division 3 Section 5. The objection was said to be on the basis that if there was to be such a clause inserted in the Award, then there should be some written record that an employee has been asked to change their hours of work. The requirement that a written record of any change be made was aimed to alleviate the situation where an employee may be coerced into working additional hours at ordinary rates rather than be paid overtime. It was the AWU's submission that the original part-time engagement should be committed in

writing and any variation to that engagement which would include an increase in hours and also include a reduction in hours should also be documented in writing.

[57] During argument before the Commission, the LGAQ advised the Full Bench that it would be amenable to inserting the words "and record in writing" after the words "a part-time employee may elect" in Clause 8.2 of Division 3 Section 5. The Full Bench was advised that the AWU accepted the proposed amendment. The amended Clause 8.2 Division 3 Section 5 would now read as follows:

> "By mutual agreement with their employer, a part-time employee may elect and record in writing, to work additional ordinarily hours above their regular hours, up to and including full-time equivalent hours. The additional hours so worked are to be taken into account in the pro rata calculation of all leave and other entitlements."

Division 4 - Section 2 - Clause 32(a)(iii)

[58] The LGAQ advised the Full Bench that it no longer pressed its opposition to Clause 32(a)(iii).

Division 4 - Section 2 - Schedule 1 - Classifications

[59] While the referral to the Full Bench indicated there may be new provisions proposed to deal with competency standards for electrical/electronic services employees, no submissions were received on this issue and it was not raised by any party at the hearing.

Division 4 - Section 3 - Nursing Services

[60] The Full Bench was advised that at the time of the original referral, Division 4 - Section 3 - Nursing Services of the Proposed Award was still the subject of discussions between the parties. By memorandum dated 25 November 2016, Deputy President Bloomfield advised the Full Bench that Division 4 - Section 3 - Nursing Services was now fully agreed between the Queensland Nurses' Union of Employees (QNU), LGAQ and the AMOD Team.

[61] Accordingly, the Full Bench makes the following orders:

1. That the *Queensland Local Government Industry Award - State 2017* be made pursuant to s 140CE(1)(a) of the *Industrial Relations Act* 1999 and operate on and from 28 February 2017, subject to the provisions of s 824 of the Act.

2. That the *Queensland Local Government Industry Award - State 2014* be repealed on and from 28 February 2017, subject to the provisions of s 824 of the Act.