

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

PARTIES: **State of Queensland (Office of Industrial Relations, Queensland Treasury)**  
**Together Queensland, Industrial Union of Employees**

CASE NO: MAP/2015/4

PROCEEDING: Making of a modern award

DELIVERED ON: 3 November 2015

HEARING DATE: 11 September 2015

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

ORDERS:

- 1. That the *Queensland Public Service Officers and Other Employees Award - State 2014* be varied pursuant to Division 2 of Part 20 of the *Industrial Relations Act 1999* (Qld) (the Act) and renamed as the *Queensland Public Service Officers and Other Employees Award - State 2015*.**
- 2. That the renamed Award shall operate from 31 October 2015 in the form appended to this Order.**

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 Public Service Officers and Other Employees 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 - General Employees (Queensland Government Departments) and Other Employees Award - State 2015 [2015] QIRC 169  
Together Queensland, Industrial Union of Employees and Others v State of Queensland (Chief Executive of the Public Service Commission) (AR/2013/4)*

APPEARANCES:

Mr C.J. Murdoch, Counsel instructed by the State of Queensland (Office of Industrial Relations, Queensland Treasury)

Mr R. Rule for Together Queensland, Industrial Union of Employees

**Decision**

- [1] In 2015, the Queensland Industrial Relations Commission ("the Commission") recommenced 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 and 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 Public Service Officers and Other Employees Award - State 2015* ("Proposed Award").

[10] The State of Queensland (Office of Industrial Relations) ("OIR") and Together Queensland, Industrial Union of Employees ("Together") provided a draft Proposed Award to the AMOD Team on 13 August 2015. The draft Proposed Award was presented as a consent position between the Employer (the State of Queensland) and Together.

[11] After considering the draft consent position, the AMOD team issued an Exposure Draft.

[12] On 28 August 2015, Deputy President Bloomfield referred a finalised version of the Proposed Award (Version 2.0) to the Vice President for referral to a Full Bench of the Commission.

[13] The Vice President referred the Proposed Award to this Full Bench for hearing and the matter was listed and heard on 11 September 2015.

### **Requirements for review of relevant modern award**

[14] Chapter 20, Part 20 of the Act includes s 842 which relevantly provides:

- "(2) ... the commission must vary the relevant modern award to include a provision that was in a relevant pre-modernisation award about...
- (d) right of entry; ...

- (3) For subsection (2), the commission may amend the provision for insertion in the relevant modern award as the commission considers appropriate having regard to—
- (a) the desirability of a modern award not duplicating provisions of the Queensland Employment Standards; and
  - (b) the modern award objectives under section 140D; and ..."

### **Objections**

[15] The OIR and Together raised the following three objections to the Proposed Award:

- 1. the non-inclusion of references to directives;
- 2. the failure to maintain a differential in spread of hours for part-time and casual employees; and
- 3. the non-inclusion of Right of Entry provisions.

### **No reference to directives and Right of Entry**

[16] In dealing with the objection concerning directives and right of entry, the Full Bench has adopted a position which is consistent with its approach in *Re: Making of a modern award - General Employees (Queensland Government Departments) and Other Employees Award - State 2015*<sup>1</sup>.

[17] In terms of directives, we consider that what was said by a Full Bench of the Commission in *Together Queensland, Industrial Union of Employees and Others v State of Queensland (Chief Executive of the Public Service Commission)*<sup>2</sup>, albeit in a different context, is apposite.

[18] The approach taken by the Full Bench in *General Employees (Queensland Government Departments) and Other Employees Award - State 2015* is in our view consistent with clause 25 of the Minister's Consolidated Request of 17 July 2015, which requests the Commission to include references to relevant directives in a modern award where a reference to that directive appeared in a relevant pre-modernisation award. Given that the purpose of such references to directives is to draw the reader's attention to their existence, we consider it more appropriate to refer to them as notes, rather than as clauses of the award.

[19] In relation to the insertion of a right of entry provisions, we are of the view that the proposed provision should be drafted in a way which, as far as possible, mirrors the provisions of the Act. In that regard, the parties were directed to redraft the "right of entry" provision to ensure consistency with the Act.

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<sup>1</sup> *Re: Making of a modern award - General Employees (Queensland Government Departments) and Other Employees Award - State 2015* [2015] QIRC 169.

<sup>2</sup> *Together Queensland, Industrial Union of Employees and Others v State of Queensland (Chief Executive of the Public Service Commission)* (AR/2013/4).

### **Spread of hours - casual employees**

- [20] The *Public Service Award 2012* provides that the hours of work for part-time and casual employees (not on flexible hours of work arrangements) were 0900 to 1700.
- [21] The *Queensland Public Service Officers and Other Employees Award - State 2014* provides a spread of hours of 0600 to 1800 for all employees whether full-time, part-time or casual.
- [22] Together submits that the employees affected by the proposed spread of hours are amongst the lowest paid in the sector. It is contended by Together that the AMOD Team's proposal is contrary to the intent of the Consolidated Request that the Commission "...must give special regard to the needs of low paid employees and the desirability of safeguarding the employment entitlements and protections for such employee".
- [23] During the oral submissions, Together advised the Commission that the spread of hours contained in the *Queensland Public Service Officers and Other Employees Award - State 2014* has had little impact on current casual employees as they are covered by a certified agreement.
- [24] This reinforces the Full Bench's view that the proposed award is a minimum safety net award upon which a negotiated outcome through the certified agreement process can achieve a far better result for individual workers.
- [25] We do not accept the argument of Together that the adoption of the proposed spread of hours will reduce flexibility. Rather, the Full Bench takes the view that the proposed spread of hours will enhance flexibility and is consistent with the object of award modernisation, in particular, s 140BA(c) which provides for the modernisation of awards so that they are, amongst other things, "... economically sustainable, and promote modern flexible work practices and the efficient and productive performance of work".
- [26] The OIR also argued that the AMOD Team's proposal for the spread of hours should revert back to 0900 to 1700, Monday to Friday, inclusive as provided for in the *Public Service Act 2012* and thereby ensuring that casual employees overtime arrangements under the Award were maintained.
- [27] In coming to its conclusion not to adopt the spread of hours provided for in the *Public Service Act 2012*, the Full Bench is cognisant of paragraph 2 of the Consolidated Request, but has taken the view that the proposed award is a minimum safety net award which is designed to provide a level of wages and conditions which an employee will expect to have access to in the absence of another "superior" instrument, e.g. a certified agreement.

### **Priority Award**

- [28] We note that in accordance with paragraph 6(d) of the Consolidated Request, the proposed award is a "Priority Award" and the Consolidated Request also envisages a variation to the award to include its coverage of cultural centre employees.

**Orders**

[29] For the reasons given above, we make the following orders:

1. That the *Queensland Public Service Officers and Other Employees Award - State 2014* be varied pursuant to Division 2 of Part 20 of the *Industrial Relations Act 1999* (Qld) (the Act) and renamed as the *Queensland Public Service Officers and Other Employees Award - State 2015*.
2. That the renamed Award shall operate from 31 October 2015 in the form appended to this Order.