

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - ss. 140G and 140GC - Variation of modern award
ss. 140G(3)(a) and 140GC(2)(a) - Commission acting on its own initiative

YOUTH DETENTION CENTRE EMPLOYEES AWARD - STATE 2016

Matter No. MA/2016/11

DEPUTY PRESIDENT O'CONNOR
DEPUTY PRESIDENT KAUFMAN
INDUSTRIAL COMMISSIONER NEATE

26 August 2016

DETERMINATION

This matter coming on for hearing before the Commission at Brisbane on 26 August 2016 this Commission orders that the said Award be varied as follows as from 1 September 2016:

1. By deleting clause 1 and inserting the following in lieu thereof:

- 1. Title**

- This Award is known as the *Youth Detention Centre Employees Award - State 2016*.

2. In clause 3:

- (a) By deleting the definition of "commission" and inserting the following in lieu thereof:

- Commission** means the Queensland Industrial Relations Commission

- (b) By deleting the definition of "rostered day off" and inserting the following in lieu thereof:

- rostered day off** means a day, other than a scheduled day off, on which an employee is not rostered for duty as a result of time accrued under the method of working ordinary hours implemented in accordance with clauses 15.1(b) to (e)

- (c) By deleting the definition of "scheduled day/s off" and inserting the following in lieu thereof:

- scheduled day off** means:

- for an employee whose ordinary hours of duty are Monday to Friday: Saturday and Sunday
 - for an employee whose ordinary hours of duty include a Saturday and/or Sunday: one of the two days each week, or four days each fortnight (and so on where 3 week or 4 week work cycles are in operation) that the employee is not rostered for duty

- (d) By deleting the definition of "union" and inserting the following in lieu thereof:

- union** means one of the industrial organisations of employees mentioned in clause 4(c)

3. By deleting clause 4(a) and inserting the following in lieu thereof:

- (a) employees whose salaries and rates of pay are fixed by this Award and who are:

Determination

- (i) engaged in employment at a youth detention centre; and
- (ii) appointed pursuant to section 119 or section 148 of the *Public Service Act 2008*; and

4. By deleting clause 5 and inserting the following in lieu thereof:

5. The Queensland Employment Standards and this Award

This Award together with the QES provide for a minimum safety net of enforceable conditions of employment for employees covered by this Award.

5. By deleting clause 6.1(c) and inserting the following in lieu thereof:

- (c) Any proposed genuine agreement reached between the chief executive and employees in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with Chapter 6 of the Act and is to have no force or effect until approval is given.

6. By deleting clauses 6.2(d) and (f) and inserting the following in lieu thereof:

- (d) In determining the outcome from facilitative provisions neither party should unreasonably withhold agreement.
- (e) ...
- (f) Where a provision refers to agreement by the majority of employees affected, all employees directly affected shall be consulted. This consultation shall be undertaken where practicable as a group, or in groups. Should the consultation process identify employees with specific concerns which relate to either equity or occupational health and safety issues, such concerns may be catered for on an individual basis subject to operational requirements.

7. By deleting the heading of clause 7.1 and inserting the following in lieu thereof:

7.1 Prevention and settlement of disputes - Award matters

8. By deleting clauses 7.1(d)(ii) and (iv) and inserting the following in lieu thereof:

- (ii) if the matter is not resolved as per clause 7.1(d)(i), it shall be referred by the union representative and/or the employee/s to the appropriate management representative who shall arrange a conference of the relevant parties to discuss the matter. This process should not extend beyond 7 days;
- (iii) ...
- (iv) if the matter is not resolved then it may be referred by either party to the Commission.

9. By deleting clause 7.2 and inserting the following in lieu thereof:

7.2 Employee grievance procedures - other than Award matters

- (a) The objectives of the procedure are to promote the prompt resolution of grievances by consultation, co-operation and discussion to reduce the level of disputation and to promote efficiency, effectiveness and equity in the workplace.

- (b) The following procedure applies to all industrial matters within the meaning of the Act:

Stage 1: In the first instance the employee shall inform such employee's immediate supervisor of the existence of the grievance and they shall attempt to solve

Determination

the grievance. It is recognised that an employee may exercise the right to consult such employee's union representative during the course of Stage 1

Stage 2: If the grievance remains unresolved, the employee shall refer the grievance to the next in line management ("the manager"). The manager will consult with the relevant parties. The employee may exercise the right to consult or be represented by such employee's union representative during the course of Stage 2

Stage 3: If the grievance is still unresolved, the manager will advise the employer and the aggrieved employee may submit the matter in writing to the employer if such employee wishes to pursue the matter further. If desired by either party the matter shall also be notified to the relevant union.

(c) The employer shall ensure that:

- (i) the aggrieved employee or such employee's union representative has the opportunity to present all aspects of the grievance; and
- (ii) the grievance shall be investigated in a thorough, fair and impartial manner.

(d) The employer may appoint another person to investigate the grievance. The employer may consult with the relevant union in appointing an investigator. The appointed person shall be other than the employee's supervisor or manager.

(e) If the matter is notified to the union, the investigator shall consult with the union during the course of the investigation. The employer shall advise the employee initiating the grievance, such employee's union representative and any other employee directly concerned of the determinations made as a result of the investigation of the grievance.

(f) The procedure is to be completed in accordance with the following time frames unless the parties agree otherwise:

Stage 1: Discussions should take place between the employee and such employee's supervisor within 24 hours and the procedure shall not extend beyond 7 days.

Stage 2: Not to exceed 7 days.

Stage 3: Not to exceed 14 days.

(g) If the grievance is not settled the matter may be referred to the Commission by the employee or the union.

(h) Subject to legislation, while the grievance procedure is being followed normal work is to continue except in the case of a genuine safety issue. The *status quo* existing before the emergence of a grievance or dispute is to continue while the procedure is being followed. No party shall be prejudiced as to the final settlement by the continuation of work.

(i) Where the grievance involves allegations of sexual harassment an employee should commence the procedure at Stage 3.

10. By deleting clause 8.2(a)(i) and inserting the following in lieu thereof:

- (i) is engaged to work a regular pattern of ordinary hours each fortnight which are less than the ordinary hours worked by an equivalent full-time employee; and

Determination

11. By deleting clause 8.2(b) and inserting the following in lieu thereof:
- (b) For each ordinary hour worked a part-time employee shall be paid no less than 1/76th of the minimum fortnightly rate of pay for their classification.
12. By deleting clauses 8.3(a) to (d) and inserting the following in lieu thereof:
- (a)
 - (i) A casual employee is an employee who is engaged and paid as such.
 - (ii) A casual employee cannot be employed to work more ordinary hours than are worked by an equivalent full-time employee each week or fortnight, as the case may be.
 - (iii) The engagement of a casual employee shall not be utilised by the employer to permanently fill any full-time or part-time position.
 - (b) A casual employee is entitled to receive, on a *pro rata* basis, the same pay and conditions of employment, other than leave entitlements, to those of an equivalent full-time employee who performs the same kind of work.
 - (c) For each ordinary hour worked a casual employee shall be paid no less than 1/76th of the minimum fortnightly rate of pay for their classification plus a casual loading of 23%.
 - (d) Each casual engagement stands alone with a minimum payment as for 2 hours' work.
13. By deleting clause 8.4(a) and inserting the following in lieu thereof:
- (a) Except where the employer and an employee agree to a different period or no period of probation prior to commencement of employment, the engagement of a full-time or part-time employee will in the first instance be subject to a probationary period of three months duration. If a period of probation of longer than three months is agreed, it must:
 - (i) be agreed in writing; and
 - (ii) be a reasonable period having regard to the nature and circumstances of the employment.
14. By deleting clause 9.3 and inserting the following in lieu thereof:
- 9.3 Notice cannot be offset**
- In the absence of mutual agreement between the employer and the employee, annual leave or any part thereof cannot be considered as or nominated as notice for the purpose of giving notice of termination of employment.
15. By deleting clause 9.5 and inserting the following in lieu thereof:
- 9.5 Statement of employment**
- The employer shall, in the event of termination of employment, provide upon request to an employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.
16. By deleting clauses 10.2(a) and (b) and inserting the following in lieu thereof:
- (a) Where the employer decides that the employer no longer wishes the job an employee/s has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of

Determination

labour, and that decision may lead to termination of employment, the employer shall consult the employee/s directly affected and, where relevant, their union/s.

- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision which will invoke the provisions of clause 10.2(a) and shall cover the reasons for the proposed terminations and measures to avoid or minimise the terminations and/or their adverse effects on the employee/s concerned.

17. By deleting clause 10.5(b) and inserting the following in lieu thereof:

- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment the employee must, at the request of the employer, produce proof of attendance at an interview or the employee will not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

18. By deleting clause 10.6(a) and inserting the following in lieu thereof:

- (a) Where a business is, whether before or after the date of commencement of this Award, transmitted from the employer (transmittor) to another employer (transmittee) and an employee who at the time of such transmission was an employee of the transmittor of the business becomes an employee of the transmittee:

- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
- (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

19. By deleting clause 10.7(a) and inserting the following in lieu thereof:

- (a) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee; or

20. By deleting clause 10.8 and inserting the following in lieu thereof:

The employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

21. By deleting clause 10.9 and inserting the following in lieu thereof:

10.9 Employees exempted

Clauses 10.1 to 10.8 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to an employee engaged for a specific period or task/s; or
- (c) to a casual employee; or
- (d) to an employee with less than one year's continuous service, in which case the general obligation on the employer should be no more than to give the relevant employee an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by the employee of suitable alternative employment.

Determination

22. By deleting clause 11.2(a) and inserting the following in lieu thereof:

- (a) The employer shall consult the employees affected and, where relevant, their union/s about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals) and ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).

23. By inserting a Note immediately below the heading for Part 4 as follows:

(Note: The wage rates and salary levels prescribed in this Award do not apply to employees to whom the provisions of Schedule 1 (Supported Wage System) apply.)

24. By deleting the heading in clause 12.1(a) and inserting the following in lieu thereof:

- (a) **Operational stream**

25. By deleting clause 12.2(a) and inserting the following in lieu thereof:

12.2 Minimum salary levels

- (a) The minimum salaries payable to employees covered by this Award are prescribed in the table below:

Classification Level	Paypoint	Award Rate ¹ Per Fortnight \$ ²	Annual Salary ³ \$ ²
OO3	1	1,878	48,995
	2	1,915	49,960
	3	1,954	50,978
	4	1,995	52,048
OO4	1	2,075	54,135
	2	2,140	55,830
	3	2,206	57,552
	4	2,270	59,222
OO5	1	2,328	60,735
	2	2,402	62,666
	3	2,478	64,649
	4	2,553	66,605
OO6	1	2,660	69,397
	2	2,730	71,223
	3	2,799	73,023

Notes:

¹ Includes the arbitrated wage adjustment payable under the 1 September 2016 Declaration of General Ruling.

² Rounded to the nearest dollar.

³ Annual salaries (fortnightly rate x 26.089) are for reference purposes only.

26. By deleting clause 12.5(a) and inserting the following in lieu thereof:

- (a) Movement of employees from the OO3 level to the OO4 level under this Award will be subject to:
- (i) the employee concerned having served at least 12 months' full-time equivalent on the maximum salary prescribed for a level 3 employee; and

Determination

- (ii) a recommendation from an assessment panel that the applicant is worthy of promotion.

27. By deleting clause 12.6(a)(iii) and inserting the following in lieu thereof:

- (iii) In the case of a casual employee with 12 months' **continuous service**:

- (A) the employee has received a salary at a particular classification and paypoint for a period of at least 12 months; and
- (B) the employee has worked 1,200 ordinary hours in such classification.

For the purpose of clause 12.6(a)(iii), **continuous service** for a casual employee is considered to be broken if more than three months, excluding any public holidays, has elapsed between the end of one employment contract and the start of the next employment contract.

28. By deleting clause 12.6(b) and inserting the following in lieu thereof:

- (b) Notwithstanding the provisions of clause 12.6(a), an employee is not entitled to move to the next salary increment level unless:
 - (i) in the case of an employee appointed at the OO3 level, or a youth worker who has progressed to OO4 level, the conduct, diligence and general efficiency of the employee has been certified by the employer to have been and to be satisfactory; or
 - (ii) in the case of an employee employed at the OO5 level or higher, performance objectives have been achieved as certified by the chief executive.

29. By deleting clause 12.7(a) and inserting the following in lieu thereof:

- (a) An employee, other than a youth worker or a section supervisor, directed to temporarily fill a position for more than three consecutive working days at a higher classification level shall be paid extra remuneration at the first paypoint of the classification level of the position being temporarily filled.

30. By deleting clause 13.2 and inserting the following in lieu thereof:

13.2 In charge of shift allowance

Shift supervisors rostered to operations, where the majority of the rostered shift is outside normal business hours (0830 to 1700), shall be paid an additional \$11.47 per shift.

31. By deleting clause 13.4 and inserting the following in lieu thereof:

13.4 Motor vehicle allowance

- (a) Where the employer requires an employee to use their own vehicle in or in connection with the performance of their duties, the employee shall be paid an allowance for each kilometre of authorised travel as follows:
 - (i) motor vehicle - \$0.77 per kilometre; and
 - (ii) motorcycle - \$0.26 per kilometre.
- (b) The employer may require an employee to record full details of all such official travel requirements in a log book.

Determination

Note: Where a directive about motor vehicle allowances covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

32. By deleting clause 13.5 and inserting the following in lieu thereof:

13.5 Overtime meal allowances and meal breaks

- (a) An employee working day work required to work overtime for:
- (i) more than 2 hours after ordinary ceasing time or for more than one hour continuing beyond 1800 on any normal working day; or
 - (ii) more than 4 hours on a scheduled day off or a rostered day off,
- shall be provided with an adequate meal at the employer's expense or paid a meal allowance of \$12.85 in lieu of the provision of such meal.
- (b) A shift worker required to work overtime for:
- (i) more than 2 hours after ordinary ceasing time on any normal working day; or
 - (ii) more than 4 hours on a scheduled day off, public holiday or a rostered day off,
- shall be provided with an adequate meal at the employer's expense or paid a meal allowance of \$12.85 in lieu of the provision of such meal.
- (c) An employee working overtime in the circumstance mentioned in clause 13.5(a)(i) shall be entitled to take a 30 minute unpaid meal break at a time agreed between the employer and employee.
- (d) An employee working overtime in the circumstance mentioned in clause 13.5(b)(i) shall be entitled to take a 30 minute paid crib break after the first 2 hours worked.
- (e) Where the employer requires the employee to continue working for a further 4 hours of continuous overtime work in either of the situations mentioned in clauses 13.5(a) or (b), the employee will be entitled to a 30 minute unpaid meal break and either provided with an adequate meal at the employer's expense or paid an additional meal allowance of \$12.85.
- (f) Where an employee has been given notice to work overtime on the previous working day or prior thereto, and has brought to work a prepared meal and such overtime is cancelled, the employee shall be paid a meal allowance of \$12.85 for such prepared meal.

Note: Where a directive about overtime meal allowance covers an employee, the provisions of the directive apply to the extent it provides a more generous entitlement.

33. By deleting clause 13.6 and inserting the following in lieu thereof:

13.6 Uniforms and laundry allowance

- (a) Where the employer requires an employee to wear a uniform, the employee shall be supplied suitable uniforms of good quality as approved by the employer. Uniforms shall be replaced by the employer on a fair wear and tear basis.

Determination

- (b) Where an employee is required to wear uniforms the employer must launder the uniform without charge to the employee or pay the employee an additional \$5.93 per fortnight.

34. By deleting clause 13.7 and inserting the following in lieu thereof:

13.7 Adjustment of monetary allowances

- (a) The allowance specified in clause 13.2 (in charge of shift allowance) shall be automatically adjusted from the same date and in the same manner as monetary allowances are adjusted in any State Wage Case decision or other decision of the Commission adjusting minimum wage rates in this Award.
- (b) At the time of any adjustment to the wage rates in this Award the expense related allowances at clauses 13.4 (motor vehicle allowance), 13.5 (overtime meal allowances and meal breaks) and 13.6 (uniforms and laundry allowance), respectively, shall be automatically adjusted by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (c) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index, as follows:

<u>Allowance</u>	<u>Eight Capitals Consumer Price Index</u> <u>(ABS Cat No. 6401.0 - Table 7)</u>
Motor vehicle allowance <i>(last adjusted 1 September 2014)</i>	Private motoring sub-group
Overtime meal allowance <i>(last adjusted 1 September 2016)</i>	Take-away and fast foods sub-group
Uniforms and laundry allowance <i>(last adjusted 1 September 2014)</i>	Clothing and footwear group

35. By deleting clause 14 and inserting the following in lieu thereof:

14. Superannuation

- (a) Subject to Commonwealth legislation and clause 14(b), the employer must comply with superannuation arrangements prescribed in the *Superannuation (State Public Sector) Act 1990* (and associated Deed, Notice and Regulation).
- (b) Where Commonwealth legislation provides for choice of fund rights to an employee subject to this Award, and that employee fails to elect which superannuation fund to which employer contributions are directed, the employer will direct contributions to the appropriate fund prescribed in the abovementioned Queensland legislation.

36. By deleting the word "work" where it appears in the heading of clause 15 and inserting the word "duty".

37. By deleting the introduction in clause 15.1(b) and inserting the following in lieu thereof:

- (b) Unless otherwise provided elsewhere in this Award, the ordinary hours of duty of employees are to be worked on one of the following bases as agreed between the employer and the employees concerned:

38. By deleting the words "one half" in clause 15.5(b)(i), and wherever they appear in the Award thereafter, and replacing them with the term "one-half".

Determination

39. By deleting clause 16.1 and inserting the following in lieu thereof:

16.1 Meal breaks - day workers

- (a) All day workers who work in excess of 5 hours on any day shall be allowed not less than 30 minutes for an unpaid meal break between the fourth and sixth hours of duty.
- (b) Employees who are required to partake of meals with residents shall be provided with meals free of charge

40. By deleting clause 16.2 and inserting the following in lieu thereof:

16.2 Meal breaks - shift workers

- (a) All shift workers shall be allowed a paid crib break of 30 minutes with such break being taken at a time which will not interfere with continuity of work.
- (b) Employees who are required to partake of meals with residents shall be provided with meals free of charge

41. By deleting clauses 17(a) and (b) and inserting the following in lieu thereof:

- (a) All employees are entitled to a paid rest pause of 10 minutes duration in the first and second half of the working day, subject to the following qualifications:
 - (i) An employee who works for 3 hours or less shall not be entitled to a rest pause.
 - (ii) An employee who works for more than 3 hours but less than 6 ordinary hours in any day shall be entitled to one 10 minute rest pause.
 - (iii) An employee who works for at least 6 ordinary hours in any day shall be entitled to two 10 minute rest pauses.
- (b) Where an employee is eligible for two paid rest pauses the employer may determine that the rest pauses be combined into one 20 minute paid rest pause, to be taken in the first half of the ordinary working day.

42. By deleting clause 18.1(c) and inserting the following in lieu thereof:

- (c) Notwithstanding any other provision in clauses 18.2 to 18.4, inclusive, an employee who performs work outside the prescribed hours of duty may, by mutual agreement with their supervisor, be compensated by way of accrued time off on a time for time basis.

43. By deleting clause 18.3(b) and inserting the following in lieu thereof:

- (b) All authorised overtime worked by a shift worker on a public holiday shall be paid for at the rate prescribed in clause 23.1.

44. By deleting clause 18.4(a) and inserting the following in lieu thereof:

- (a) Where an employee is recalled to perform duty after completing their normal shift or on any rostered day off or scheduled day off the employee shall be paid overtime rates for such duty with a minimum payment of 2 hours at overtime rates.

45. By deleting clause 19.1(b) and inserting the following in lieu thereof:

- (b) A shift worker proceeding on annual leave is entitled to receive the following payment:

Determination

- (i) an amount equal to the salary level being paid to the employee immediately before the employee takes the leave for the period of such leave calculated according to the employee's roster or projected roster including shift, weekend or public holiday penalties; or
 - (ii) an amount equal to the salary level being paid to the employee immediately before the employee takes the leave for the period of such leave plus a further amount equal to 17.5% of the salary payable for ordinary time in relation to the employee's substantive position for the period of such leave, excluding any shift, weekend or public holiday penalties,
- whichever is the higher.

46. By deleting clauses 19.2(a) and (c) and inserting the following in lieu thereof:

- (a) Where their work unit is compulsorily closed over the Christmas/New Year period, all affected employees shall have their annual leave entitlement debited (other than a **concessional day**) by the number of ordinary working days, or hours in the case of part-time employees, they would ordinarily have worked between Christmas Day and New Year's Day, inclusive.
- (b) ...
- (c) Notwithstanding the provisions of clause 19.2(a), the employer and an employee may agree that an employee may access any accrued rostered day/s off or accrued time off in lieu during a compulsory Christmas closure period instead of having their annual leave entitlement debited.

47. By amending the Note under clause 20 as follows:

Note: Where a directive about sick or bereavement leave covers an employee, the provisions of the relevant directive apply to the employee to the extent it provides a more generous entitlement.

48. By deleting clause 21 and inserting the following in lieu thereof:

21. Parental leave

- (a) Parental leave is provided for in Division 5 of the QES and covers:
 - (i) birth-related leave for an employee who is pregnant or whose spouse gives birth;
 - (ii) adoption leave; and
 - (iii) surrogacy leave.
- (b) Notwithstanding the provisions of Subdivision 2 of Division 5 of the QES, all full-time and part-time employees are entitled to parental leave upon commencement of employment.
- (c)
 - (i) An employee who is pregnant, whether or not she has given her employer written notice of the date/s on which she proposes to start and/or end maternity leave, must:
 - (A) commence maternity leave at least 6 weeks prior to the expected date of birth of her child; and
 - (B) remain on maternity leave until at least 6 weeks after the birth of the child.
 - (ii) An employer may at the request of the employee and on receipt of a certificate from a medical practitioner certifying that in the opinion of the medical practitioner:

Determination

- (A) the employee is fit for duty until a specified date - reduce the period mentioned in clause 21(c)(i)(A); or
 - (B) the employee is fit to resume duty - reduce the period mentioned in clause 21(c)(i)(B).
- (iii) If the employer makes a decision under clause 21(c)(ii)(A) to reduce the period, the approval is of effect until:
- (A) the day specified in the medical certificate; or
 - (B) the day 14 days after the day the employer revokes the decision by giving written notice to the employee; or
 - (C) the employee commences maternity leave; or
 - (D) the day of the employee's confinement,
- whichever happens first.
- (d) An employee who is pregnant, during the term of her pregnancy until 6 weeks before the expected date of birth of her child or lesser period as approved by the employer, may request to work part-time or other flexible work arrangements.
- (e) An employee who has taken leave to attend compulsory interviews or examinations as part of an adoption process or who has taken leave to attend compulsory interviews or court hearings associated with a surrogacy arrangement may request that such leave be taken as paid annual leave.
- (f) In addition to the provisions of Subdivision 6 of Division 5 of the QES an employee who has returned to work on a part-time basis may seek to return to the position they held prior to commencing parental leave.
- (g) If the position mentioned in clause 21(f) no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position that is, as nearly as possible, comparable in status and remuneration to that of the employee's former position.
- (h) The employer must make a position to which the employee is entitled available to the employee.
- (i) (i) An employee who is the parent of a child may apply, at any time, to their employer to work on a part-time basis in order to be the child's primary caregiver when not at work.
- (ii) The requirements concerning the manner in which the employee may make an application to work part-time under clause 21(i)(i) are the same as those contained in the QES with respect to applications to return to work on a part-time basis for an employee on parental leave (i.e. s 71 GT).
- (iii) The period in relation to which an application under clause 21(i) may be made cannot extend beyond the day the child is required to be enrolled for compulsory schooling under the *Education (General Provisions) Act 2006*.
- (iv) The requirements concerning the manner by which the employer is to assess any application by an employee to work part-time are the same as those contained in the QES with respect to assessing applications to return to work on a part-time basis for an employee on parental leave (i.e. s 71GU).

Determination

Note: Where a directive about paid parental leave covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

49. By deleting clause 22(b) and inserting the following in lieu thereof:

- (b) In lieu of the provisions of section 71HB(2)(a) and (b) of the Act, all employees who complete 10 years' continuous service are entitled to long service leave at the rate of 1.3 weeks on full pay for each year of continuous service and a proportionate amount for an incomplete year of service.

50. By deleting clause 23.1 and inserting the following in lieu thereof:

23.1 Payment for public holidays and for work on a public holiday

- (a) An employee (other than a casual employee) who would normally work on a day on which a public holiday falls and who:
 - (i) is not required to work on that day, shall be paid for the ordinary hours the employee would normally have worked if that day had not been a public holiday;
 - (ii) is required to work on the public holiday shall, in addition to the payment prescribed in clause 23.1(a)(i), be paid at the rate of time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.
- (b) An employee (including a casual employee) who would normally work on a day on which a public holiday falls and who performs authorised overtime outside the employee's ordinary working hours for that day shall be paid for such time at double the overtime rate prescribed in clauses 18.2 or 18.3, as the case may be.
- (c) An employee (including a casual employee) who would not normally be required to work on a public holiday but who is required to work on that day shall be paid at the rate of double time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.
- (d) The minimum payment provided in clauses 23.1(a) or (c) shall not apply where the work performed on the public holiday is immediately preceding or following ordinary hours.

51. By deleting clause 23.2(a) and inserting the following in lieu thereof:

- (a) Subject to statutory limitations (such as the time work may not be performed on Anzac Day) where there is agreement between the employer and an employee or employees, another ordinary working day may be substituted for a public holiday.

52. By deleting clauses 23.4(a) and (b) and inserting the following in lieu thereof:

- (a) An employee (other than a casual employee) whose rostered day off falls on a public holiday shall be paid an additional day's wage for each such day on which they are rostered off.
- (b) For the purpose of clause 23.4(a) **additional day's wage** means:
 - (i) for a full-time employee, 7.6 hours at ordinary rates; and
 - (ii) for a part-time employee, the number of ordinary hours normally worked on the same day of the week on which the holiday falls.

53. By deleting clause 26 and inserting the following in lieu thereof:

26. Travelling and relieving expenses

Determination

An employee who is required to:

- (a) travel on official duty; or
- (b) take up duty away from the employee's usual place of work to relieve another employee; or
- (c) to perform special duty,

is to be provided, where necessary as determined by the employer, with reasonable transport and accommodation and reimbursed actual and reasonable expenses for transport, accommodation, meals and incidental expenses necessarily incurred by the employee.

Note: Where a directive about travelling and relieving expenses covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

54. By deleting clause 27(c) and inserting the following in lieu thereof:

- (c) A consultative mechanism and procedure involving representatives of management, employees and the relevant unions shall be established as determined by the chief executive, having regard to the size, structure and needs of the employer.

55. By deleting clauses 30(b) to (f) and inserting the following in lieu thereof:

- (b) Employees may be granted up to 5 working days (or the equivalent hours) paid time off (non-cumulative) per calendar year, approved by the employer to attend industrial relations education sessions.
- (c) Additional leave, over and above 5 working days non-cumulative (or the equivalent hours) in any one calendar year may be granted where approved structured employees' training courses involve more than 5 working days (or the equivalent). Such leave will be subject to consultation between the employer, the relevant union and the employee.
- (d) Upon request and subject to approval by the employer, employees may be granted paid time off in special circumstances to attend management committee meetings, union conferences, and Australian Council of Trade Unions (ACTU) Congress.
- (e) The granting of industrial relations education leave or any additional special leave should not impact adversely on service delivery, work requirements or the effectiveness and efficiency of the work unit concerned. At the same time, such leave shall not be unreasonably refused.
- (f) At the discretion of the employer, employees may be granted special leave without pay to undertake work with their union.

56. By deleting clauses 31(b)(i) and inserting the following in lieu thereof:

- (b) Entry procedure
 - (i) An authorised industrial officer may enter a workplace at which the employer carries on a calling of the officer's organisation, during the employer's business hours, to exercise a power under section 373 of the Act as long as the authorised industrial officer:
 - (A) has notified the employer or the employer's representative of the officer's presence; and
 - (B) produces their authorisation, if required by the employer or the employer's representative.

Determination

57. By deleting Schedule 1 - Supported Wage System and inserting the following in lieu thereof:

Schedule 1 - Supported Wage System

This Schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the supported wage system.

Definitions - In this Schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this Award for the class of work for which an employee is engaged

supported wage system (sws) means the Commonwealth Government system to promote employment for people who cannot work at full Award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

sws wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

Eligibility criteria

- (a) Employees covered by this Schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Award, because of the effects of a disability on their productive capacity, and who meet the impairment criteria for receipt of a disability support pension.
- (b) This Schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of the *Workers' Compensation and Rehabilitation Act 2003*.

Supported wage rates

- (a) Employees to whom this Schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following Table and Note:

Assessed capacity (see below)	Relevant minimum wage*
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

*Note: The minimum amount payable to an employee receiving a supported wage must not be less than \$82 per week.

Determination

- (b) Where an employee's assessed capacity is 10%, the employee must receive a high degree of assistance and support.

Assessment of capacity

- (a) For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the sws by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.
- (b) All assessments made under this Schedule must be documented in a sws wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the sws.

Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this Schedule will be entitled to the same terms and conditions of employment as other workers covered by this Award on a *pro rata* basis.

Workplace adjustment

If the employer wishes to employ a person under the provisions of this Schedule it must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation.

Trial period

- (a) In order for an adequate assessment of the employee's capacity to be made, the employer may employ a person under the provisions of this Schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- (c) The minimum amount payable to the employee during the trial period must be no less than the amount recorded in the Note under the Table (above).
- (d) Work trials should include induction or training as appropriate to the job being trialled.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment (see **Assessment of capacity** - above).

Youth Detention Centre Employees Award - State 2016

Determination

Dated: 26 August 2016

By the Commission,
M. Shelley,
Deputy Industrial Registrar.

Operative Date: 1 September 2016
Determination - Correction of error

Released: 26 August 2016