

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 125 - making, amending and repealing awards

**Local Government Association of Queensland Ltd AND The Australian Workers' Union of Employees,
Queensland (A/2011/47)**

**ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH SERVICES OFFICERS
INTERIM AWARD - STATE 2003**

DEPUTY PRESIDENT SWAN
COMMISSIONER BROWN
COMMISSIONER THOMPSON

23 May 2012

AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 13 February 2012 this Commission orders that the said Award be amended as follows as from 13 February 2012:

1. By deleting clause 4.4.1(a) and inserting the following in lieu thereof:

- (a) discrimination on the basis of sex, relationship status, family responsibilities, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality and association with, or relation to, a person identified on the basis of the above attributes;

2. By deleting clauses 4.7.12(a) and 4.7.12 (b) and inserting the following in lieu thereof:

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.7 shall not apply to an employer that employs employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

3. By deleting clause 5.5 and inserting the following in lieu thereof:

5.5 Superannuation

5.5A Superannuation - Local Government Employees

All Local Governments and Local Government Entities subject to this Award must comply with superannuation arrangements prescribed in the *Local Government Act 2009* and the *Local Government (Operations) Regulation 2010*.

Local Governments and their Entities employing persons defined as being "non-contributory members" of the LG Super Scheme pursuant to s. 223 of the *Local Government Act 2009*, shall on behalf of such employees, contribute an amount to the LG Super Scheme that the Local Government or Entity must make to avoid being required to pay the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992* in respect to such employees.

5.5B Non Local Government Employees

5.5.1 *Application* - In addition to the rates of pay prescribed by this Award, eligible employees, as defined herein, shall be entitled to occupational superannuation benefits, subject to the provisions of clause 5.5B.

5.5.2 *Contributions* -

- (a) Amount - As from 1 January 2005 every employer shall contribute on behalf of each eligible employee an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund, as defined in this clause. Each such payment of contributions shall be rounded off to the nearest ten (10) cents:

Provided that where an employee is absent and is receiving by way of workers' compensation an amount of money no less than the award rate of pay the contribution shall be calculated at 3%.

- (b) Regular payment - The employer shall pay such contributions to the credit of each such employee at least once each calendar month or in accordance with the requirements of the approved fund trust deed.

- (c) Minimum level of earnings - As from 1 January 2005 no employer shall be required to pay superannuation contributions on behalf of any eligible employee in respect of any month during which the employee's ordinary time earnings, as defined, is less than \$450.00.
- (d) Absences from work - Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on workers' compensation.
- (e) Other contributions - Nothing in clause 5.5B shall preclude an employee from making contributions to a fund in accordance with the provisions thereof.
- (f) Cessation of contributions - An employer shall not be required to make any further contributions on behalf of an eligible employee for any period after the end of the ordinary working day upon which the contract of employment ceases to exist.
- (g) No other deductions - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the Fund other than the remission of contributions as prescribed herein.

5.5.3 Definitions

- (a) Approved fund means a fund approved for the purposes of this Award by the Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by this Award.
- (b) "Eligible employee" for clause 5.5B means any employee who has been employed by an employer, other than a Local Government or Local Government Entity employer for which the LG Super Scheme applies, and who has worked a minimum of 38 hours during a period of 4 consecutive weeks (the qualifying period). After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.5B.2(a) from the commencement of that qualifying period.
- (c) Fund means a superannuation fund satisfying the Commonwealth legislation for occupational superannuation funds and satisfying the superannuation fund conditions in relation to a year of income, as specified in the relevant Act and complying with the operating standards as prescribed by Regulations made under the relevant Act. In the case of a newly established fund, the term shall include a superannuation fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.
- (d) Ordinary time earnings means the actual ordinary rate of pay the employee received for ordinary hours of work including shift loading and leading hand, in-charge or supervisory allowances where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fare and travelling time allowances or any other extraneous payments of a like nature.

5.5.4 For the purposes of this Award an approved fund shall be -

- (a) Sunsuper
- (b) Any named fund as is agreed to between the relevant employer/Union parties to this Award and recorded in an approved industrial agreement.
- (c) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in or by an award of an Industrial Tribunal and already has practical application to the majority of award employees of that employer whether under a Queensland State Award or a Federal Award.
- (d) In relation to any particular employer, any other established fund to which that employer was already making regular and genuine contributions in accordance with clause 5.5B.2(a) on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contributions:

Provided that the making of a deposit, or initial or other contributions subsequent to 29 September 1989, but on a retrospective basis, in respect of any period up to and including 29 September 1989, shall not under any

circumstances bring a fund within the meaning of clause 5.5B.4. The mere signing and submission of any nomination for membership documents to Trustees of a Fund prior to 29 September 1989 does not bring a fund within the meaning of clause 5.5B.4.

In the event of any dispute over whether any fund complies with the requirements of clause 5.5, the onus of proof shall rest upon the employer.

5.5.5 *Challenge of a fund -*

- (a) An eligible employee being a member or potential member of a fund, as well as the Union whose registered list of callings incorporates any of the classification/s of employees to whom this Award applies, may by notification of a dispute challenge a fund on the grounds that it does not meet the requirements of clause 5.5B.
- (b) Notwithstanding that the Commission determines that a particular Fund does not meet the requirements of clause 5.5B, the Commission may in its discretion and subject to any recommendation, direction or order it may make, recognise any or all of the contributions previously made to that fund a having met the requirements or part thereof of clause 5.5B.2 up to and including the date of that determination.
- (c) In the event of any dispute over whether any fund complies with the requirements of clause 5.5B, the onus of proof shall rest upon the employer.

5.5.6 *Fund selection -*

- (a) No employer shall be required to make or be prevented from making, at any one time, contributions into more than one approved fund. Such fund, other than a fund referred to in clause 5.5B.4(d), shall be determined by a majority decision of employees.
- (b) Employees to whom clause 5.5B applies who as at the date of this amendment are members of an established fund covered by clause 5.5B.4(d) shall have the right by majority decision to choose to have the contributions specified in clause 5.5B.2 paid into a fund as provided for elsewhere in clause 5.5B.4(d) has application.
- (c) The initial selection of a fund recognised in clause 5.5B.4 shall not preclude a subsequent decision by the majority of employees in favour of another fund recognised under that clause where the long term performance of the fund is clearly disappointing.

Where clause 5.5B.6 has been utilised and as a result another approved fund is determined, access to a further re-appraisal of the fund for the purpose of favouring yet another fund shall not be available until a period of 3 years has elapsed after that utilisation.

5.5.7 *Enrolment -*

- (a) Each employer to whom clause 5.5B applies shall as soon as practicable as to both current and future eligible employees -
 - (i) notify each employee of the employee's entitlement to occupational superannuation;
 - (ii) consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause 5.5B.4;
 - (iii) take all reasonable steps to ensure that upon the determination of an appropriate fund each eligible employee, receives, completes, signs and returns the necessary application forms provided by the employer to enable that employee to become a member of the fund; and
 - (iv) submit all completed application forms and any other relevant material to the trustees of the fund.
- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with clause 5.5B shall:
 - (i) complete and sign the necessary application forms to enable that employee to become a member of that fund; and
 - (ii) return such forms to the employer within 28 days of receipt in order to be entitled to the benefits of the contributions prescribed in clause 5.5B.4.

- (c) Where an employer has complied with the requirements of clause 5.5B.7(a) and an eligible employee fails to complete, sign and return the application form within 28 days of the receipt by him of that form, then the employer shall:
- (i) Advise an eligible employee in writing on the non-receipt of the application form and further advise the eligible employee that continuing failure to complete, sign and return such form within 14 days could jeopardise his entitlement to the occupational superannuation benefit prescribed by clause 5.5B;
 - (ii) In the event that an eligible employee fails to complete, sign and return such application form within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which such completed and signed application form is received by the employer;
 - (iii) In the event that an eligible employee fails to return a completed and signed application form within a period of 6 months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form is a prerequisite to the payment of any occupational superannuation contributions; and
 - (iv) At the same time as advising the eligible employee pursuant to clause 5.5B.7(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the secretary of the Union whose registered callings incorporate the classification of the eligible employee a copy of each letter forwarded by the employer to the eligible employee a copy of each letter forwarded by him to the eligible employee pursuant to clauses 5.5B.7(c)(i) and 5.5B.7(c)(iii).
- (d) Where an employer fails to provide an eligible employee with an application form in accordance with clause 5.5B.7(a)(iii) the employer shall be obliged to make contributions as from the date an employee became an "eligible employee" if that occurs thereafter provided that an employee completes, signs and returns to the employer an application form within 28 days of being provided with the application form by the employer. Where an eligible employee fails to complete, sign and return an application form within such period of 28 days the provisions of clause 5.5B.7(c) shall apply.

5.5.8 *Unpaid contributions*

Subject to Chapter 11, Part 2, Division 5 of the Act and to clause 5.5B.5, where the discretion of the Commission has been exercised, should it be established that the employer has failed to comply with the requirements of clause 5.5B.2 in respect of any eligible employee such employer shall be liable to make the appropriate contributions retrospectively to the date of eligibility of the employee, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant approved fund, or as necessary a fund to be determined by the Commission under clause 5.5B.5, had they been paid on the due date.

The making of such contributions satisfies the requirements of clause 5.5B excepting that resort to clause 5.5B.8 shall not limit any common law action which may be available in relation to death, disablement or any similar cover existing within the terms of a relevant fund.

5.5.9 *Record keeping*

The employer shall be required to maintain records of time worked for the purposes of establishing the employee's entitlement to occupational superannuation, and of payments made to the approved fund in similar form to time and wages records required to be kept in accordance with section 366 of the Act, and shall have such records available for inspection by an Industrial Inspector or officer of the Union, authorised pursuant to sections 371 and 373 of the Act.

5.5.10 *Exemptions*

- (a) An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.5B in the following circumstances -
- (i) Incapacity to pay the costs associated with its implementation; and
 - (ii) Any special or compelling circumstances peculiar to the business of the employer.

4. By deleting clause 7.3.1 and inserting the following in lieu thereof:

- 7.3.1 Full-time and part-time employees shall, on the death of a member of their immediate family or household be entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave shall be

without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

5. By deleting clause 7.4 and inserting the following in lieu thereof:

7.4 Long service leave

All employees covered by this Award are entitled to long service leave on full pay under, subject to, and in accordance with, the provisions of Chapter 2, Part 3, sections 42-58 of the Act as amended from time to time.

Portability of long service leave entitlements for Local Government employees is provided pursuant to Division 4; Part 3; Chapter 5 - Administration, of the *Local Government (Operations) Regulation 2010*.

6. By deleting clause 7.5 and inserting the following in lieu thereof:

7.5 Family leave

The provisions of the Family Leave Award 2003 apply to and are deemed to form part of this Award.

7.5.1 It is to be noted that:

- (a) part-time work can be performed by agreement in the circumstances specified in the Family Leave Award 2003;
- (b) a copy of the Family Leave Award 2003 is required to be displayed in accordance with section 697 of the Act.

7.5.2 The Family Leave Award also provides for the terms and conditions of leave associated with:

- (a) Maternity leave
- (b) Parental leave
- (c) Adoption leave
- (d) Carers leave for the care and support of the employee's immediate family or household.

7. By deleting clauses 11.1.3(b)(ii) and (iii) and inserting the following in lieu thereof:

(ii) has made a written request to the employer that they do not want their record inspected.

8. By deleting clause 11.2.4 and inserting the following in lieu thereof:

11.2.4 Such records shall be open to inspection during the employer's business hours by an inspector of the Department of Justice and Attorney-General, in accordance with section 371 of the Act, or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

Dated 23 May 2012.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Operative Date: 13 February 2012
Amendment - Various clauses
Released: 23 May 2012