

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: Making of a modern award - Hospital and Health Service General Employees (Queensland Health) Award – State 2015* [2016] QIRC 010

PARTIES: **State of Queensland (Department of Health)**
Australian Workers' Union of Employees, Queensland
Together Queensland, Industrial Union of Employees
United Voice, Industrial Union of Employees

CASE NO: MAP/2015/7

PROCEEDING: Making of a modern award

DELIVERED ON: 21 January 2016

HEARING DATE: 4 November 2015

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

ORDERS:

- 1. That the *Hospital and Health Service General Employees (Queensland Health) Award - State 2015* be made pursuant to section 140CE(1)(a) of the *Industrial Relations Act 1999* ("the Act") and operate on and from 30 November 2015, subject to the provisions of section 824 of the Act;**
- 2. That the *District Health Services Employees' Award - State 2012* be repealed on and from 30 November 2015, subject to the provisions of section 824 of the Act.**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 Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal

and Torres Strait Islander Partnerships - *Hospital and Health Service General Employees (Queensland Health) Award - State 2015* - Modern Award made.

CASES: *Industrial Relations Act 1999*, Chapter 5, Part 8, Division 2, ss 140BB, 140C(1), 140CE(1)(a), 824

Re: In the matter of the making of Modern Awards - Common Provisions [2015] QIRC 194

APPEARANCES: Mr B. Fletcher-Wode and Mt P. Patmore for the State of Queensland (Department of Health)

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

Mr D. Peverill for United Voice, Industrial Union of Employees

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

Reasons for Decision

- [1] 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") and the issuing of a variation to the existing Ministerial Request ("the Consolidated Request") on 17 July 2015.
- [2] 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."

- [3] 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 by the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships ("the Minister"), the Award Modernisation Team ("AMOD Team") of the Commission prepared an Exposure Draft of a proposed *Hospital and Health Service General Employees (Queensland Health) Award – State 2015* ("the Proposed Award").
- [4] Clause 6(h) of the Consolidated Request identified the *District Health Services Employees Award – State 2012* as a priority award for modernisation.
- [5] The State of Queensland (Queensland Health) provided a draft Proposed Award to the AMOD Team on 17 August 2015. The draft Proposed Award was presented as a consent position between the Employer (the State of Queensland) and industrial parties.
- [6] On 20 October 2015, Deputy President Bloomfield referred a finalised version of the Proposed Award to Deputy President O'Connor for the consideration of the Full Bench.
- [7] On 26 October 2015, the Proposed Award was referred to this Full Bench for hearing and the matter was listed and heard on 4 November 2015.
- [8] Subsequent to the Full Bench hearing, a number of settlement conferences were convened by Deputy President Bloomfield with a view to preparing a final draft award.
- [9] It was submitted to the Full Bench that Schedule 6.3 should be re-inserted thereby preserving the conditions of employment of employees engaged prior to 1 March 1993. It was contended that the retention of Schedule 6.3 in the Proposed Award was consistent with the Consolidated Request and represents a consent position of both the employer and industrial parties.
- [10] After considering the submissions of the parties, both written and oral, the Full Bench formed the view that Schedule 6.3 ought to be included within the Proposed Award in the following terms:

"S6.3 Application of existing preserved conditions and directives

Employees engaged prior to 1 March, 1993, who were subject to the provisions of, or received the benefits of, the *Public Service Management and Employment Act 1988* and Regulations (now prescribed in the *Public Service Act 2008*) and as such received the benefits of the terms and conditions prescribed by the *Public Service Act 2008* and Regulations or who by Award or administrative prescription received the benefits of all or part of the provisions as contained in the *Public Service Act 2008* and Regulations will continue to be entitled to receive the following terms and conditions of employment:

Directive number	Directive name or condition of employment
19/99	Locality allowance
14/08	Leave and travel concessions - Isolated centres
9/13	Special leave: (Discretionary leave as prescribed in Clause 8)
10/13	Recreation and long service leave: (Annual leave entitlement for officers headquartered in the Northern and Western Region)
-	Salary determinations for overtime as prescribed in clause 6.4 of the <i>Queensland Public Service Award - State 2003</i>

Note: A reference to a directive in this Schedule is taken to be a reference to a directive which replaces the directive/s named in this Schedule."

- [11] A number of further conferences were held between the parties and Deputy President Bloomfield to settle the final form of the Proposed Award and to consider the outcome of the decision of another Full Bench in *Re: In the matter of the making of Modern Awards - Common Provisions*¹.
- [12] On 30 November 2015, Deputy President Bloomfield forwarded to the Full Bench the final version of the Proposed Award representing a consent position between the parties.
- [13] The Full Bench, after considering the final draft Proposed Award, and being satisfied that the Proposed Award complies with the requirements of the Act in relation to modern awards; is consistent with the statutory objects of the award modernisation process; and meets the requirements of the Minister's Consolidated Request, is of the view that the Proposed Award ought to be made in the terms of the award attached to these reasons and operate on and from 30 November 2015.

¹ *Re: In the matter of the making of Modern Awards - Common Provisions* [2015] QIRC 194.

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

1. That the *Hospital and Health Service General Employees (Queensland Health) Award - State 2015* be made pursuant to section 140CE(1)(a) of the *Industrial Relations Act 1999* ("the Act") and operate on and from 30 November 2015, subject to the provisions of section 824 of the Act;
2. That the *District Health Services Employees' Award - State 2012* be repealed on and from 30 November 2015, subject to the provisions of section 824 of the Act.