

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: In the matter of the making of Modern Awards - Parents and Citizens Associations Award - State 2016* [2016] QIRC 094

PARTIES: Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees

Together Queensland, Industrial Union of Employees

United Voice, Industrial Union of Employees Queensland

The Australian Workers' Union of Employees, Queensland

Bli Bli State School P & C Association & Ors

CASE NO: MAP/2016/8

PROCEEDING: Making of a modern award

DELIVERED ON: 31 August 2016

HEARING DATES: 17 and 19 August 2016

HEARD AT: Brisbane

MEMBERS: **Industrial Commissioner Fisher**
Industrial Commissioner Thompson
Industrial Commissioner Black

ORDERS:

- 1. That Clause 5 of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Parents and Citizens Associations Award - State 2016* be deleted and the following be inserted in lieu thereof:**

"This Award together with the QES provide for a minimum safety net of enforceable conditions of employment for employees covered by this Award."
- 2. That Clause 8.2(c) of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Parents***

and Citizens Associations Award - State 2016 be deleted and the following be inserted in lieu thereof:

"Subject to clause 13.1, a part-time employee, except a Retail operations stream employee, may work a broken shift with a minimum payment of 1 hour per attendance."

3. That Clause 8.3(c) of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Parents and Citizens Associations Award - State 2016* be deleted and the following be inserted in lieu thereof:

"Subject to clause 13.1, a casual employee, except a Retail operations stream employee, may work a broken shift with a minimum payment of 1 hour per attendance."

4. That Clause 29(a) of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Parents and Citizens Associations Award - State 2016* be deleted and the following be inserted in lieu thereof:

"Clause 29 shall not apply to a P&C Association that employs employees working a total of fewer than 456 hours, on average, per week excluding overtime, Monday to Sunday, over the previous 6 months (excluding school vacation periods)."

5. That the *Parents and Citizens Associations Award - State 2016* be made pursuant to section 140CE(1)(a) of the *Industrial Relations Act 1999 (the Act)* and operate on and from 1 September 2016, subject to the provisions of section 824 of the Act.
6. That the *Parents and Citizens Associations Retail Award - State 2012* be repealed on and from 1 September 2016.
7. That insofar as they cover Parents and Citizens Associations, the *Children's Services Award - State 2012; Clerical*

Employees Award - State 2012 and the Health and Fitness Centres, Swim Schools and Indoor Sports Award - State 2012 be repealed on and from 1 September 2016.

CATCHWORDS:

INDUSTRIAL LAW - AWARD MODERNISATION - MAKING OF A MODERN AWARD - Section 140C(1) of the *Industrial Relations Act 1999* - where request from the Minister for Employment and Industrial Relations that *Parents and Citizens Associations Award - State 2016* Modern Award be made - where an employer organisation has been deregistered under the *Industrial Relations Act 1999* - whether a federally registered organisation can be heard - whether a federally registered employer organisation can appear as agent for individual employers - where a reduction in the engagement period for clerical employees is proposed - whether the *Clerical Employees Award - State 2012* applies to clerical employees employed by Parents and Citizens Associations - where broken shifts for retail operations stream employees is opposed - where amendments to industrial relations education leave is proposed.

CASES:

Industrial Relations Act 1999, Chapter 5, Part 8, Division 2, ss 140BA, 140BB, 140C(1), 140CE(1)(a), 140D, 273, 824
Education (General Provisions) Act 2006 (Qld), s 133
Fair Work Act 2009

APPEARANCES:

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

Mr D. Kerr, Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

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

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

Ms R. Cahill and Ms L. Cislawski, Australian Community Services Employers Association, t/a Community Management Solutions as Agent for Bli Bli State School P&C Association and 13 Others.

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. A new Consolidated Request was issued by the Honourable Grace Grace, Minister for Employment and Industrial Relations (the Minister) on 6 June 2016.
- [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 Minister, the Award Modernisation (AMOD) Team of the Commission prepared an Exposure Draft of a proposed *Parents and Citizens Associations Award - State 2016* (the Proposed Award).

- [4] On 12 July 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. The terms of the Proposed Award were agreed between the parties and the AMOD Team, except for the following matters:

"The Shop Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) opposes those elements of the proposed Award (at clauses 8.2(c) and 8.3(c)) which provide that a part-time or a casual Retail operations stream employee may be asked to work a broken shift with a minimum payment of 1 hour (which would attract a broken shift payment, at clause 13.1, of \$13.20), subject to a minimum payment of 3 hours per day (i.e. 2 hours and 1 hour, plus a broken shift payment, could be permitted under the proposed clause).

United Voice, Industrial Union of Employees, Queensland (UV) opposes the content of clause 29(a) which records the minimum employee levels required before an employer is required to grant paid time off to a union representative to attend industrial relations education sessions".

- [5] On 12 July 2016, interested organisations were invited to make written submissions opposing any aspects of the proposed draft award as were those interested parties who raised an objection to any submission made. Submissions were received from the Australian Community Services Employers Association, trading as Community Management Solutions, the SDA, TQ and UV.
- [6] In addition to the objections identified in the referral by Deputy President Bloomfield, UV and TQ notified the following objections:
- UV -
 - (i) Clause 1 - Title
 - (ii) Clause 29 - Industrial Relations Education Leave
 - TQ -
 - (i) Clause 8.2 - Reduction in minimum engagement period for clerical staff
 - (ii) Clause 29 - Consolidation of minimum staffing level exemptions associated with access to paid industrial relations education leave.

- [7] On 4 August 2016, Deputy President Bloomfield further advised three minor amendments were made to clauses 1, 5 and 14 of the Proposed Award which he understood had been accepted by those involved. An updated award, incorporating these amendments, was provided by Deputy President Bloomfield to those involved and the Full Bench.

- [8] The matter was heard by the Full Bench on 17 and 19 August 2016.

Representation

- [9] At the hearing on 17 August 2016 the Australian Community Services Employers Association (ACSEA) sought leave to appear as an Interested Party. The Full Bench requested ACSEA to explain the basis of its appearance given that it is an organisation

registered under the *Fair Work Act 2009* and had elected to seek deregistration under the *Industrial Relations Act 1999* in 2015.

- [10] ACSEA was unable to respond to the Full Bench's enquiry at that time.
- [11] Mr Peverill, on behalf of UV, opposed ACSEA's appearance in the proceedings as it was no longer a registered industrial organisation in Queensland. This opposition was supported by TQ, the AWU and the SDA.
- [12] At the request of ACSEA the Full Bench granted an adjournment of the proceedings until Friday 19 August 2016 to enable ACSEA to obtain instructions.
- [13] Subsequently ACSEA filed Notices of Appointment of Agent (Form 33) in respect of the following P&C Associations:

Bli State School;
 Caloundra State High School;
 Elanora State High School;
 Eumundi State School;
 Fernvale State School;
 Freshwater State School;
 Greenbank State School;
 Jimboomba State School;
 Kelvin Grove State College;
 McDowall State School;
 Mt Crosby State School;
 Mundingburra State School;
 Redlynch State College; and
 Tully State High School.

- [14] When the hearing resumed, the union parties, while having some queries with the representation, advised they were keen to resolve the issue and to have the Proposed Award made as soon as possible. In light of those submissions, the Full Bench stated it continued to hold some reservations about whether the appointment of ACSEA as the agent for individual P&Cs was sufficient to allow ACSEA to appear in the Commission given that the organisation is not registered under the Act. However, because the Unions were not persisting with their objections and wished to proceed with the hearing, the Full Bench made no formal decision on the matter of representation of the P&Cs.

Award Modernisation - Relevant Act Provisions

- [15] 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 -

...

- (b) together with the Queensland Employment Standards, provide for a fair minimum safety net of enforceable conditions of employment for employees; and

..."

"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;

..."

The Parents and Citizens Associations Award - State 2016

- [16] The proposed *Parents and Citizens Associations Award - State 2016* is intended to regulate the conditions of persons in paid employment with parents and citizens associations across Queensland. The P&Cs informed us that:

"Parents and Citizens Associations in Queensland are created under the *Education (General Provisions) Act 2006* (Qld). The objectives of such Associations under that Act are to promote the interest of, and facilitate the development and further improvement of, the State instructional institution for which they are formed. Further, the *Education (General Provisions) Act 2006* (Qld) at s.133 defines Parents and Citizens' Associations as statutory bodies."

- [17] We were also informed by the P&Cs that historically the operations of the associations have been supported by a strong volunteer base. This position is recognised in the Proposed Award where it is provided at clause 4.2 that the award "does not apply to any person who genuinely volunteers, in writing, their labour". The submission of the P&Cs was that while associations may need to employ staff to complement the volunteer labour, the associations continue to rely significantly on volunteers and will only employ staff if it is financially viable for them to do so.

- [18] There are approximately 1,260 unincorporated P&Cs which would be covered by the Proposed Award. It will also cover approximately 3,000 employees of P&Cs who are presently covered by the following awards:

- (a) *Children's Services Award - State 2012* (the *Children's Services Award*);

- (b) *Clerical Employees Award - State 2012 (the Clerical Award)*;
- (c) *Health and Fitness Centres, Swim Schools and Indoor Sports Award - State 2012 (the Health and Fitness Award)*; and
- (d) *Parents and Citizens Associations Retail Award - State 2012 (the Retail Award)*.

Objections

Clause 1 - Title

- [19] Clause 1 has been amended in the updated Proposed Award provided to the Full Bench by Deputy President Bloomfield on 4 August 2016 to remove the words, "minimum safety net" from the Title clause. This amendment was made in light of the Full bench decision in the *Ambulance Service Employees' Award - State 2016*.¹ In its written submissions UV had advised of its objection to the clause originally contained in the AMOD Team's Exposure Draft award.
- [20] Because of that objection, the matter has been specifically referred to in this decision. The parties have advised that they consent to the amendment and as noted, it has been incorporated into the Proposed Award.

Clause 5 - Queensland Employment Standards and this Award

- [21] Clause 5 was not a matter raised by the parties but was raised by the Full Bench in light of the *Ambulance* decision.
- [22] The proposed content of Clause 5 reads:

"The QES and this Award contain the minimum safety net of enforceable conditions of employment for employees covered by this Award."

- [23] This proposed clause is not consistent with the decision of the Full Bench in the *Ambulance* decision.² In that decision the Full Bench accepted "the submission that, where there is consistency in the requirements of the enabling legislation, it is desirable that a degree of consistency be adhered to in the format of modern awards."³ Although those remarks were made in the context of the Title clause, this reasoning also caused the Full Bench to raise the issue of consistency in the wording of Clause 5 with the parties.
- [24] The Full Bench said in its decision:

"[17] During the hearing, the Full Bench expressed the view that the wording of Clause 5 in the Proposed Award should be amended to reflect the wording of ss 140BA(b), 140D(1) and 273(1)(a) of the Act. It was suggested the amended wording be as follows:

¹ *Re: In the matter of the making of Modern Awards - Ambulance Service Employees' Award - State 2016* [2016] QIRC 079.

² *Ibid* [17].

³ *Ibid* [13].

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

[25] The parties consent to the amendment proposed by the Full Bench.

[26] For the reasons set out in the *Ambulance* decision above, we amend Clause 5 to reflect that decision.

Clause 8.2(b) - Reduction in minimum engagement period for clerical employees

[27] The AMOD Team's Exposure Draft contains the following provision in clause 8.2:

"(b) Subject to clause 8.2(c), a part-time employee shall receive a minimum payment for those working ordinary hours of duty as follows:

- (i) For Clerical and administrative, Operations managers and Retail operations streams, respectively - 3 hours' work per day; and
- (ii) For all other streams - 2 hours' work per day."

[28] TQ submitted that administrative staff of the P&Cs are currently employed under a number of Awards including the *Clerical Award*. That Award currently provides a minimum engagement period of four consecutive hours on *any shift* for part-time employees. The current *Retail Award* provides a minimum engagement of three hours *per day* for part-time employees.

[29] TQ referred to the Award Modernisation Request which provides the following at paragraph 2:

"Award modernisation is not intended to reduce or remove employee entitlements and conditions from what is available in pre-modernisation awards."

[30] Further, s 140BA(b) of the Act provides that the principal object of modernising awards is for the Award together with the QES to provide for a minimum safety net of enforceable conditions of employment for employees.

[31] TQ contended that it would be contrary to the Minister's Consolidated Request and the Act to reduce the minimum engagement period for part-time employees from four hours per shift to three hours per day. It was accepted that an allowance would apply if a broken shift were to be worked and that the "per day" minimum of three hours would have application. However the entitlement under the *Clerical Award* to a minimum of four hours pay for each shift worked meant that, under a broken shift regime, two four hour minimums would operate. These considerations supported a conclusion that a significant reduction in entitlements would result.

[32] We do not consider that the streaming mechanism is appropriate to resolve this objection. Unlike the case of "broken shifts" where uniform provisions do not apply across the various streams identified in Clause 12.4, a streaming approach to the objection taken by TQ to the minimum engagement provisions would necessitate prescribing different conditions of employment for the same class of employee. That is, an employee performing clerical or administrative duties at a particular level could

benefit from a four hour minimum while another employee performing clerical or administrative duties at the same level could be entitled to a three hour minimum. Such outcomes in our view are likely to generate discontent and disharmony and are counter-productive to accepted industrial relations norms.

- [33] It is also a factor in our considerations of the objection, that the great majority of clerical and administrative employees currently employed by P&Cs have been engaged under the *Retail Award* which provides for a minimum payment of three hours per day. In this regard the P&Cs submit that the "vast majority" of employees who will be covered by the clerical and administrative stream would have been previously employed under the *Retail Award*. It was also the P&Cs submission that the imposition of a four hour minimum for administrative employees would unreasonably increase labour costs which in turn would have negative consequences for employment opportunities as P&Cs responded by either increasing their reliance on voluntary labour or outsourcing the clerical and administrative function. It was also put to the Full Bench that a requirement to provide four hours minimum work will preclude some current or potential employees from taking the work because they do not want to work, or are not able to work, for that period of time.
- [34] A conclusion that almost all clerical and administrative employees are currently employed by P&Cs under the terms of the *Retail Award* is not surprising given the expression of provisions relevant to a determination about the coverage of both the *Retail Award* and the *Clerical Award*.
- [35] In this regard while the parties submitted that some administration employees were covered by the *Clerical Award*, no party explained how, as a matter of law or practice, both Awards might have coverage of the same class of employee. Such an explanation would have been pertinent in circumstances where a reading of the relevant provisions of both the *Clerical Award* and the *Retail Award* suggests that administration employees are covered by the *Retail Award* to the exclusion of the *Clerical Award*.
- [36] According to clause 1.4, the *Retail Award* applies to "all employees as defined, engaged in retailing and/or hiring operations". The term "hiring operations" is not explained. A review of clause 5.1 (Definitions) and clause 5.2 (Wages and Classifications) informs us that the clerical or clerical related classification is that of "administration assistant". The administration assistant is defined in clause 1.15.15 as a person who assists with the "administrative duties" of the association, while an expanded definition in clause 5.1.2 defines the administration assistant as a person:
- " ... employed principally in the pursuit or vocation of writing, engrossing, typing or calculating, whether by ordinary means or by means of any process calculated to achieve a like result, and/or in invoicing, billing, charging, checking, or otherwise dealing with records, writing, correspondence, books and accounts liaison with volunteers."
- [37] TQ is a party to the *Retail Award*. Clause 1.5.23 of the Award endows joint coverage on it in respect to administration assistants:
- " 'Union' and/or 'Unions' mean the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees and/or The Australian Workers' Union of Employees, Queensland and/or Together Queensland,

Industrial Union of Employees (in respect to P&C Administration Assistants and P&C Operations Manager) and/or the Queensland Services, Industrial Union of Employees (P&C Administration Assistants and P&C Operations Manager)."

- [38] The *Clerical Award* states at clause 1.4 that the award applies to "persons employed wholly or principally as a clerk as defined". Clause 1.6.2 defines a "clerk" in the following terms:

" 'Clerk' means any person employed either exclusively or principally in the pursuit or vocation of writing, engrossing, typing, or calculating, whether by ordinary means or by means of any process calculated to achieve a like result, and/or in invoicing, billing, charging, checking, or otherwise dealing with records, writings, correspondence, books, and accounts of any person, firm, company, association, corporation, or Local Government, whether employed in trading, law, insurance, manufacturing, buying, selling, forwarding, receiving and recording. The term 'Clerk' also includes any person engaged exclusively or principally in attending to telephone switchboards, receiving and answering calls, and manipulating any apparatus to enable people to converse, as well as manipulating any keyboard or other apparatus to facilitate communication, or in any other clerical capacity whatsoever, but does not include persons engaged solely in collecting money out of doors."

- [39] The definition of an "administration assistant" in the *Retail Award* is substantially similar to the definition of "clerk" under the *Clerical Award*. The significant difference is that the *Clerical Award* definition includes provision for any person engaged exclusively or principally in attending to telephone switchboards or equivalent functions, and includes a "catch all" proposition that a clerk includes a person engaged exclusively or principally in "any other clerical capacity". It is unlikely that anyone would be employed by a P&C to "exclusively or principally" attend to telephone communications and there is no information before us to enable a determination to be made about whether a P&C employee might be bound to the *Clerical Award* by reference to the "any other clerical capacity" provision in the *Clerical Award*.

- [40] It can be seen that the *Retail Award* includes provision for clerical duties, and in many respects the very same duties as those contemplated by the *Clerical Award*. In these circumstances it is likely that the *Retail Award* would fall within the exemption contemplated by clause 1.4.1(c) of the *Clerical Award* which is expressed in the following terms:

"(c) Employees covered by any other award of the Queensland Industrial Relations Commission covering duties of a clerical nature."

- [41] In the circumstances while some or all of the provisions of the *Clerical Award* may be applied as a matter of practice to some "administration assistants" employed by P&Cs, it may well be the case that legal coverage is effected by the coverage of the *Retail Award*. In such circumstances, the provisions of the *Clerical Award* would not be relevant in the determination of provisions to be included in the proposed modern award.

- [42] If, despite this reasoning, there is a capacity for clerical and administrative work performed for a P&C to be legally covered by the *Clerical Award*, it appears to us that

the Minister's Consolidated Request is able to be complied with by invoking the savings provisions of the Proposed Award. In this regard clause 4.4(b) of the Proposed Award provides that "no employee is to suffer any loss or diminution of entitlements or terms of conditions of employment enjoyed immediately prior to the commencing of this Award."

Broken Shifts

Clause 8.2(c) - part-time employees

Clause 8.3(c) - casual employees

- [43] The AMOD Team's Exposure Draft Award makes provision for part-time and casual employees to work a broken shift and to receive a minimum payment of one hour per attendance. The definition of "broken shift" included in clause 3 provides that the unpaid break between two periods of work must exceed one hour. It is relevant that the provisions of clause 8 provide that both casual employees and part-time employees must receive a minimum daily payment of either two or three hours. Clause 13.1 provides that a broken shift allowance of \$13.20 per day is payable to "an employee required to report for work twice per day" but is not to be paid to casual employees employed in the Outside School Hours Care and vacation care streams.
- [44] The P&Cs submitted that their associations are unique retail businesses in that the alignment of trading hours with customer demand means that uniform shop operations and OSHC activities are restricted to a relatively short period of time coinciding with the start and the end of the school day. In these circumstances, broken shifts would deliver greater flexibility for employees and allow an increase in paid employment opportunities. It was pointed out that employees will continue to be provided with a minimum engagement of three hours per day and some will also receive a broken shift allowance.
- [45] The P&Cs further submitted that if broken shifts were not permitted, uniform shop trading hours were likely to be restricted to either the start or finish of the school day, and may lead to P&Cs electing to outsource the operation of uniform shops.
- [46] The operational imperative associated with employees employed in connection with the OSHC program, uniform shops which trade both at the start and the finish of the school day, and in swim school or health and fitness activities which feature sessions before and after school, being allowed to work broken shifts is self-evident. While the operational circumstances are recognised by most unions, they are resisted by the SDA on the basis that the *Retail Award* does not make provision for broken shifts and on other grounds including that the award modernisation process should not be the vehicle for the introduction of new provisions and that broken shifts have not been a feature of awards regulating the retail sector at large.
- [47] The Secretary of the SDA, Christopher Gazenbeek, provided an Affidavit attesting to the absence of broken shift provisions for retail workers. Mr Gazenbeek was not required for cross-examination. The evidence of Mr Gazenbeek and the submissions of the SDA are that there is no precedent in either the state or federal jurisdictions for broken shifts in the retail sector:

- "A: The former State Award (*Retail Industry Award - State 2004*) held, at Clause 6.1.1(a)(iv)(D)(II): ' ... *provided that broken shifts shall not be worked.*'
- B: At the conclusion of the federal Award modernisation process, both the *General Retail Industry Award 2010* and *Fast Food Industry Award 2010* held at Clause 12.5: '*An employer is required to roster a part-time employee for a minimum of three hours per shift*'.
- C: While the *Hospitality Industry (General) Award 2010* does contemplate the possibility of broken shifts, it imposes stringent conditions on their use. Having regard to these conditions, if the Commission were to consider accepting the employer representatives' proposals, we submit similarly stringent conditions ought to be imposed here."

[48] We are not unsympathetic to the submissions of the P&Cs that broken shifts would better align working arrangements with the operations of uniform shops. We also accept that the availability of broken shifts may create more job opportunities if they facilitate the conduct of two trading sessions by uniform shops. However, the exclusion from the *Retail Award* of such provisions and the objections of the SDA raise significant barriers to the inclusion of provisions as a result of the award modernisation process. In the circumstances, we have decided to exclude the Retail operations stream from the application of the broken shifts provisions in the Proposed Award.

[49] As a result, clauses 8.2(c) and 8.3(c) shall be deleted and the following inserted in lieu thereof:

"Subject to clause 13.1, a part-time employee, except a Retail operations stream employee, may work a broken shift with a minimum payment of 1 hour per attendance."

"Subject to clause 13.1, a casual employee, except a Retail operations stream employee, may work a broken shift with a minimum payment of 1 hour per attendance."

Clause 14 - Superannuation

[50] Deputy President Bloomfield, in his advice of 4 August 2016, said that it had come to the AMOD Team's attention that reference to "The Queensland Independent Education and Care Superannuation Trust (QIEC)" was omitted from clause 14 of the original draft submitted to the AMOD Team by the parties and needs to be included in that clause as 14(b)(vi).

[51] The parties consent to this amendment and it has been included in the revised draft forwarded by Deputy President Bloomfield.

Clause 29 - Industrial Relations Education Leave

[52] UV objected to the proposed clause 29(a) which provides:

"Clause 29 shall not apply to a P&C Association that employs employees working a total of fewer than 550 hours, on average, per week excluding overtime, Monday to Sunday, over the previous 6 months (excluding school vacation periods)."

[53] In its place UV proposed the following clause:

"29(a) Clause 29 will not apply to an employer with less than 9 full-time equivalent employees bound by this Award".

[54] UV submitted that the current arrangements regarding exemptions for industrial relations education leave, as set out in clause 11.4 of the *Children's Services Award* should continue. In its view, Clause 29(a) of the Proposed Award alters the effect of clause 11.4(b) of the *Children's Services Award* in that clause 29(a) of the Proposed Award introduces a higher barrier for an employee's eligibility to access industrial relations education leave and there are no grounds for doing so. Clause 11.4(b) of that Award relevantly provides:

"Clause 11.4 will not apply to an employer with less than 9 full-time equivalent employees bound by this Award."

[55] UV submitted that there was no sound basis for the proposed alignment of criteria determining an employee's eligibility for industrial relations education leave with the criteria for exempting employers from the obligation to pay redundancy pay.⁴ No such alignment exists in the current *Children's Services Award* where the threshold for redundancy pay is fixed by reference to a total employment figure of 15 employees and the threshold for industrial relations education leave is determined by reference to a full time equivalent (FTE) employment figure of 9. In this regard it was relevant that no submission had been made claiming that the operation of different exemption provisions had been the cause of any confusion. It followed that confusion was unlikely to apply if the Proposed Award also included different forms of exemption.

[56] We note however that while UV submitted that there was no demonstrated difficulty with the operation of different exemption thresholds in the *Children's Services Award*, no evidence was adduced in the proceedings about the operation of current clauses either in the *Children's Services Award* or in any of the other Awards. We are unable therefore to arrive at any conclusions about the application of current clauses, the incidence and frequency of leave taken, or whether any operational or financial difficulties were associated with the taking of leave.

[57] UV submitted that any increase in the restriction on access to industrial relations education leave would be contrary to the purpose of the award modernisation process and the Minister's Consolidated Request.

[58] UV proposed an alternative provision in the event the Full Bench did not accept its primary position. The proposed alternative clause 29(a) is:

"Clause 29 will not apply to an employer bound by this Award with less than 9 full-time equivalent employees whose positions are classified in the OSHC and vacation care stream of this Award, otherwise, in respect of all other employees,

⁴ See clause 10.10 (**Employers exempted**) of the Proposed Award.

clause 29 shall not apply to a P&C Association that employs employees working a total of fewer than 550 hours, on average, per week excluding overtime, Monday to Sunday, over the previous 6 months (excluding school vacation periods)."

- [59] UV submitted this proposal maintains the current exemption for employees employed under the *Children's Services Award* and otherwise adopts the AMOD Team's Exposure Draft Award provision.
- [60] TQ also objected to the proposed clause as it would have the effect of restricting the capacity for employees in the OSHC and Vacation Care Stream of the Proposed Award to access industrial relations education leave when compared to the pre-modernised award. It supported UV's objection as well as its alternative proposal.
- [61] The P&Cs submitted that the majority of employees are covered by the *Retail Award* which has no applicable industrial relations education leave provisions. They objected to UV's proposed clause on the basis that it would significantly increase the obligation placed on employers because the existing provision relates only to employees employed in OSHC and Vacation Care. UV's proposed new provision carries over the application to 9 or more employees but in circumstances where the Proposed Award expands the coverage of employees to include those other Awards.
- [62] A review of the current Awards applying to P&Cs discloses that industrial relations education leave provisions are not included in the *Retail Award*. The other three Awards include industrial relations education leave provisions, but exemption clauses operate to remove any obligation for employers who employ a limited number of employees. The *Children's Services Award* provides that an exemption is effected if the employer employs less than nine FTEs bound by that particular Award. The exemption in the *Clerical Award* is for employers who employ fewer than 15 employees covered by that particular award. Under the *Health and Fitness Award*, 400 employment hours per week need to be worked (presumably by employees covered by that Award) before an entitlement arises. The Proposed Award exempts P&Cs with average total employment hours of less than 550 per week.
- [63] The Full Bench notes that the entitlement of P&C employees to industrial relations education leave under the four awards is limited with no provisions under the *Retail Award* and exemption levels under the *Clerical Award* and the *Health and Fitness Award* which make it improbable that many employees would derive an entitlement. In these circumstances the implementation of a uniform provision would have a beneficial effect for all employees when employed by a P&C which employs significant levels of labour.
- [64] In our view the preferred course must be, given that the parties have agreed to the formulation of a single award to replace four pre-existing awards, to establish uniform provisions where possible and practicable having regard to the restraints imposed by the Act and the Minister's Consolidated Request. In this instance we do not accept that the provisions of the *Children's Services Award* should be considered to raise a non-negotiable impediment to the settlement of a uniform industrial relations education leave provision. This is because, as was submitted by the P&Cs, the basis for the exemption contained in the Proposed Award is different to that contained in the *Children's Services Award*.

- [65] Whether or not an entitlement has been reduced can only be established with certainty if evidence is adduced showing both the number of FTEs employed by any particular P&C under the *Children's Services Award* and the number of FTEs employed by that same P&C under the other three awards that might have application. Provided that a P&C employed one or more employees under any of the other three Awards, then any threshold based on a total employment figure can be higher than 9 FTEs without reducing the entitlement formerly expressed under the *Children's Services Award*. If, for example, a P&C employed 9 FTEs under the *Children's Services Award* and 5.5 FTEs under the other three Awards, then the level of the exemption is the same under both the *Children's Services Award* and the Proposed Award (on the basis that 14.5 FTEs equates to 550 aggregate hours of employment).
- [66] This conclusion provides the basis for the formulation of a uniform provision which provides for a higher threshold than 9 FTEs or 342 aggregate hours of employment. We acknowledge however that the failure of the parties to provide any significant data disclosing the number of FTEs in each of the streams included in the Proposed Award, makes the formulation of such a provision very difficult and inevitably results in some form of arbitrary assessment. However if we do not proceed to settle a uniform provision, we would be obliged to implement a convoluted streaming arrangement which would ensure that many classes of employees would be denied any entitlement to industrial relations education leave.
- [67] In all the circumstances we have concluded that the provision included in the Proposed Award should be retained but subject to a modification to the hours threshold. In our view it can reasonably be concluded that the provisions of the Act and the Minister's Consolidated Request will be complied with if the threshold set in the Proposed Award provision is reduced to 456 hours.
- [68] We also note that a consideration of whether a diminution of entitlement has occurred is not limited to the level of the aggregate hours threshold. A comparison of all relevant industrial relations education leave provisions shows that there are some provisions included in the current *Children's Services Award* which are inferior to or less favourable than (for employees) the entitlement set out in the Proposed Award *viz.*:
- (i) An employee must complete six months continuous service to be eligible;
 - (ii) There are caps on the number of employees from any one P&C that can participate in any one year;
 - (iii) Proof of attendance can be required;
 - (iv) Non-attendance for any part of the training program can disentitle the employee for payment of the period not attended.
- [69] It is our determination that clause 29(a) of the AMOD Team's Exposure Draft of the proposed *Parents and Citizens Associations Award - State 2016* is deleted and the following clause is inserted in lieu thereof:

"Clause 29 shall not apply to a P&C Association that employs employees working a total of fewer than 456 hours, on average, per week excluding overtime, Monday to Sunday, over the previous 6 months (excluding school vacation periods)."

New Award

[70] The Full Bench, after considering the updated Proposed Award and the required amendments as set out above, 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 1 September 2016. (Note: The Award incorporates the 2016 State Wage Case adjustment to wages and allowances).

Orders

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

1. That Clause 5 of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Parents and Citizens Associations Award - State 2016* be deleted and the following be inserted in lieu thereof:

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

2. That Clause 8.2(c) of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Parents and Citizens Associations Award - State 2016* be deleted and the following be inserted in lieu thereof:

"Subject to clause 13.1, a part-time employee, except a Retail operations stream employee, may work a broken shift with a minimum payment of 1 hour per attendance."

3. That Clause 8.3(c) of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Parents and Citizens Associations Award - State 2016* be deleted and the following be inserted in lieu thereof:

"Subject to clause 13.1, a casual employee, except a Retail operations stream employee, may work a broken shift with a minimum payment of 1 hour per attendance."

4. That Clause 29(a) of the Award Modernisation (AMOD) Team's Exposure Draft of the proposed *Parents and Citizens Associations Award - State 2016* be deleted and the following be inserted in lieu thereof:

"Clause 29 shall not apply to a P&C Association that employs employees working a total of fewer than 456 hours, on average, per week excluding overtime, Monday to Sunday, over the previous 6 months (excluding school vacation periods)."

5. That the *Parents and Citizens Associations Award - State 2016* be made pursuant to section 140CE(1)(a) of the Act and operate on and from 1 September 2016, subject to the provisions of section 824 of the Act.
6. That the *Parents and Citizens Associations Retail Award - State 2012* be repealed on and from 1 September 2016.
7. That insofar as they cover Parents and Citizens Associations, the *Children's Services Award - State 2012*; *Clerical Employees Award - State 2012* and the *Health and Fitness Centres, Swim Schools and Indoor Sports Award - State 2012* be repealed on and from 1 September 2016.