

VARIATION OF AWARD MODERNISATION REQUEST UNDER SECTION 140CA

VARIATION NOTICE

I, CURTIS PITT, TREASURER AND MINISTER FOR EMPLOYMENT AND INDUSTRIAL RELATIONS (“the Minister”), pursuant to section 140CA(1) of the *Industrial Relations Act 1999* (“the IR Act”) request that the Vice-President of the Queensland Industrial Relations Commission (“the Commission”) recommence the award modernisation process in accordance with this variation notice. This variation notice varies the award modernisation request as follows:

Rescind all remaining paragraphs of the consolidated request dated 15 October 2014, except for paragraph 1.

Insert the following paragraphs:

Statement of Intent

2. A modern award shall provide for fair and just employment conditions.

The purpose of award modernisation is to ensure awards remain relevant and provide for the rights and responsibilities that ensure economic advancement and social justice for all employees and employers.

Award modernisation is not intended to reduce or remove employee entitlements and conditions from what is available in pre-modernisation awards. Having regard to this, the Commission shall ensure wages and employment conditions continue to provide fair conditions in relation to the living standards prevailing in the community and what is afforded to employees and employers in the relevant pre-modernisation award/s. Furthermore, the Commission must give special regard to the needs of low paid employees and the desirability of safeguarding the employment entitlements and protections for such employees.

When modernising awards, the Commission is to take into account the amended legislative framework under which the award modernisation process will recommence, particularly the amendment of the modern award objectives at section 140D of the IR Act and the removal of proscriptions and qualifications for certain content which may now be included in modern industrial instruments. The Commission must also have due regard to any agreement reached by the parties on a particular matter for inclusion in a modern award throughout the modernisation process.

The outcome of award modernisation is to provide for a fair and just industrial relations system underpinned by clear, certain and stable modern awards.

3. The Commission is to establish an award modernisation program for completing the award modernisation process in accordance with paragraphs 4 to 11 of this request. The award modernisation program is to be published in an electronic format.

Priority Awards

4. The Commission is to prepare and publish a program for the modernisation of certain pre-modernisation awards and the review and variation of certain modern awards made prior to the passage of the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015* (the “IR Amendment Act”) that are identified as priorities at paragraph 6 of this request (known collectively as “priority awards”).
5. In developing the award modernisation program for these priority awards the Commission is to have regard to the requirements set out at paragraphs 12 to 16 of this request. The program for these priority awards shall include the following information:
 - a) the date by which the relevant parties are to provide a draft award or submission about the modern award or the proposed modern award;
 - b) the date for a Full Bench hearing to make or vary the modern award to the meet the timeline for the making or variation of the modern award; and
 - c) the date by which the modern award or proposed modern award is to be reviewed and varied or made as set out in paragraph 7 of this request.
6. The priority awards are as follows:
 - a) a single, consolidated modern award for employees engaged in the Queensland public service in operational and related ‘blue-collar’ occupations under the *Employees of Queensland Government Departments (Other than Public Servants) Award – State 2012* and other relevant awards:
 - (i) including any relevant coverage for Cultural Centre entities; and
 - (ii) excluding coverage for employees engaged under the *Conservation, Parks and Wildlife Employees’ Award – State Government 2012*, and
 - b) the *Resident Medical Officers (Queensland Health) Award – State 2014*;
 - (i) including any relevant coverage for Senior Medical Officers, Medical Superintendents (with the right of private practice) and Medical Officers (with the right of private practice);
 - c) a single modern award to replace the *Queensland Health Framework Award – State 2012* (refer to paragraphs 27-29);
 - d) the *Queensland Public Service Officers and Other Employees Award – State 2014*,
 - (i) including coverage for Cultural Centre entities;
 - e) the *Queensland Local Government Industry Award – State 2014* (also see Schedule 1 for further requirements in relation to the review and variation of this award);
 - f) the *Health Practitioners and Dental Officers (Queensland Health) Award – State 2014*;
 - g) the *Queensland Health Nurses and Midwives Award – State 2012*;
 - h) the *District Health Services Employees Award – State 2012*; and

- i) the *WorkCover Queensland Employees Award - State 2014*.
7. Dates for the making or the variation of priority awards are set out in this paragraph. While it is expected that the Commission will meet the dates prescribed, the Vice President may make a written request to the Minister seeking a short extension where the Vice President considers such an extension is necessary. The dates for the making or variation of priority awards are as follows:
- a) the *Employees of Queensland Government Departments (Other than Public Servants) Award – State 2012* and other relevant awards by 30 September 2015;
 - b) the *Resident Medical Officers (Queensland Health) Award – State 2014* by 30 September 2015;
 - c) the *Queensland Health Framework Award – State 2012* by 31 October 2015;
 - d) the *Queensland Public Service Officers and Other Employees Award – State 2014*, by 31 October 2015;
 - e) *Queensland Local Government Industry Award – State 2014* by 31 October 2015;
 - f) the *Health Practitioners and Dental Officers (Queensland Health) Award – State 2014* by 31 October 2015;
 - g) the *Queensland Health Nurses and Midwives Award – State 2012* by 30 November 2015;
 - h) the *District Health Services Employees Award – State 2012* by 30 November 2015; and
 - i) *WorkCover Queensland Employees Award – State 2014* by 30 November 2015.

Remaining awards

8. As soon as practicable after the publication of the award modernisation program for priority awards, the Commission shall provide for in the award modernisation program the modernisation of the remaining pre-modernisation awards and the review and variation of the remaining modern awards made prior to the passage of the *IR Amendment Act* (known collectively as the “remaining awards”).
9. The Commission must consult with the relevant employer and employee representatives and organisations for the development of the program for the remaining awards and is to have regard to the nominal expiry dates of relevant certified agreements.
10. The award modernisation program as it pertains to the remaining awards may be reviewed and varied from time to time as the Commission deems appropriate. Any changes to the program must be published in electronic format.
11. The Commission shall endeavour to complete the award modernisation process by 30 June 2016 or as soon as is practicable thereafter.

Award modernisation process

12. When undertaking the award modernisation process, the Commission must have regard to:
 - a) Chapter 5 Part 8 of the IR Act;
 - b) for the review and varying of existing modern awards – the provisions of Chapter 20 Part 20 Division 2 of the IR Act;
 - c) for those awards yet to be modernised – section 851 of the IR Act; and
 - d) Part 13 Division 6 of the *Hospital and Health Boards Act 2011* (in relation to the *Resident Medical Officers (Queensland Health) Award – State 2014*).
13. In addition, the Commission must have due regard to any agreement reached by the parties on a particular matter for inclusion in a modern award (a “consent position”) throughout the modernisation process.
14. Subject to paragraph 15, the Commission must adopt the following procedure for the making or variation of modern awards:
 - a) The Commission must invite the relevant parties to provide a draft award or submission about the modern award/proposed modern award to the Commission.
 - b) The Commission is then to convene a conference (or conferences) to consider any draft award or submission made by a relevant party.
 - c) The Commission is then to prepare and release an exposure draft.
 - d) The exposure draft must have regard to:
 - i. any draft award or submission (written or oral) made by a relevant party; and
 - ii. any consent position.
 - e) The exposure draft is to be made available in an electronic format.
 - f) The Commission is to convene a further conference (or conferences) for the parties to make submissions in relation to the exposure draft.
 - g) A draft modern award is to be prepared and referred to a Commission Full Bench. The Vice-President may establish one or more Full Benches for the purpose of the making or variation of modern awards. Each modern award is to be varied or made by a Full Bench.
15. Where it considers appropriate, the Commission may adapt the process in paragraph 14 to include referral of particular matters to a Full Bench (for example, in relation to the application of section 844 ‘Commission may increase the number of modern awards’).
16. A modern award may include transitional arrangements to ensure the award complies with the objects of award modernisation set out in this award modernisation request and the IR Act.

Generic Awards

17. When modernising awards, the Commission is to give consideration to:
 - a) the following generic awards:
 - i. Family Leave Award – State 2012;
 - ii. Family Leave (Queensland Public Sector) Award – State 2012;
 - iii. Training Wage Award – State 2012;
 - iv. Supported Wage Award – State 2012; and
 - b) identifying any matters contained in these awards which the Commission considers are safety net terms and conditions and, if the Commission is satisfied that the matters are not adequately provided for in the QES and are permitted to be included in modern awards, the Commission should:
 - i. develop a consistent approach to include such matters in modern awards, or
 - ii. make a specific modern award or awards.

Reporting on the progress of award modernisation

18. Once the Commission has established a program for completing the award modernisation process in accordance with paragraph 3, the Vice-President is to provide the Minister with an initial report outlining the details of the program and any other matters which the Vice-President considers appropriate.
19. Following this initial report, the Vice-President is to provide the Minister with quarterly reports outlining:
 - (a) those industries and/or occupations undergoing or about to commence award modernisation;
 - (b) the progress of award modernisation, including any significant developments during the previous period and key issues or developments scheduled for the next period;
 - (c) any other matters which the Vice-President considers appropriate; and
 - (d) a response to any matters raised by the Minister.
20. The reports are due by:
 - (a) 30 September 2015;
 - (b) 31 December 2015
 - (c) 31 March 2016, and
 - (d) 30 June 2016.
21. In addition to paragraphs 18 – 20, the Vice President may report to the Minister at any other time as the Vice President considers appropriate and necessary.

Minimum wage

22. In accordance with section 71ND of the Act, minimum wages are a matter that may be dealt with in modern awards. In dealing with minimum wages, the Commission is to have regard to the desire for modern awards to provide a comprehensive range of fair minimum wages for all employees including, where appropriate, piece rates and wages for young employees, employees with a disability and employees engaged as apprentices or trainees.

Allowances

23. Allowances should be clearly and separately identified in modern awards.
24. The Commission is to ensure that all modern awards include an appropriate method or formula for automatically adjusting relevant allowances when minimum wage rates are adjusted.

Other content matters

25. Certain rulings made under section 53 and 54 of the *Public Service Act 2008* provide enforceable conditions of employment for many public service employees. The Commission is requested to include references to relevant directives in a modern award where a reference to that directive appeared in a relevant pre-modernisation award.
26. The Commission must retain provisions relating to district and divisional allowances in a consolidated modern award for employees engaged in the Queensland public service in operational and related 'blue-collar' occupations. The Commission must also retain provisions relating to district and divisional allowances in modern awards made for relevant employees currently engaged under the *Building Trades Public Sector Award - State 2012*, *Civil Construction, Operations and Maintenance General Award - State 2012* and *Engineering Award - State 2012*.

Further review of modern Queensland Health Framework Award

27. After the initial modernisation of the *Queensland Health Framework Award* (in accordance with paragraph 6(c)), the Commission must conduct a further review of that award.
28. When conducting its further review, the Commission must give particular consideration to updating award content, including relevant definitions, references and related provisions.
29. This further review is to occur immediately prior to the completion of the award modernisation process.

Other matters

30. The Commission is also to ensure that no award coverage of auxiliary firefighters occurs as a result of the award modernisation process defined under section 140BB(1) of the Act.

Regulatory complexity and coverage

31. Throughout the award modernisation process, the Commission must seek to:

- a) avoid unnecessary overlap and duplication of coverage of awards;
- b) reduce regulatory complexity, however this requirement is not to outweigh a need for distinct or unique industrial conditions for a particular group of employees where such provisions are appropriate to reflect a professional or industrial peculiarity or characteristic;
- c) use contemporary language; and
- d) ensure that the objectives of award modernisation are met for all modern awards prior to the completion of the process for the purposes of section 140CD of the Act. If necessary, the Commission may act in this regard of its own motion under section 140G(3)(a) of the Act.

Schedule 1 – Local Government (excluding Brisbane City Council) award modernisation priorities

As per paragraph 6(e) of this Variation Notice, the Commission is to prioritise the review and variation of the *Queensland Local Government Industry Award – State 2014* in accordance with Chapter 20 Part 20 of the IR Act.

Pursuant to section 844 of the IR Act and in addition to the review and variation of the *Queensland Local Government Industry Award – State 2014*, the Commission must consider an increase to the number of modern awards covering the local government industry.

In doing so the Commission is to invite the parties to make submissions on increasing the number of modern awards covering the local government industry. The Commission is not to be bound by previous Commission decisions when considering increasing the number of modern awards covering the local government industry.

Additionally, the requirement expressed at clause 20 of the former Award Modernisation Ministerial Request for the Commission to “give consideration to consolidating pre-modernisation awards operating in the local government sector (excluding the Brisbane City Council) and create a new modern Local Government Industry Award covering employees and employers subject to those (pre-modernisation) awards” no longer applies and is not supported by this variation notice.

It is open to the Commission to reconsider the number of awards in the Queensland local government industry. In this regard the Commission is to give consideration to increasing the number of modern awards in the Queensland local government industry such that there are separate awards for:

- a) salaried, professional, administrative, clerical, technical and supervisory employees;
- b) operational employees (including those in civil construction, horticultural, maintenance, etc.); and
- c) trade qualified employees.

Additionally, consideration should also be given to whether professional groups (e.g. early childhood teachers, nurses) employed in the Queensland local government sector are more appropriately included in relevant occupational awards.

Allowances and other provisions

The Commission is to give consideration to a review of the allowances and other provisions in the *Queensland Local Government Industry Award – State 2014*. To this end the Commission is to give consideration to restoring the provision of locality allowance (including additional leave provisions attached to that allowance) where such provisions were available in the pre-modernisation award/s.

Furthermore, the Commission is to review the consolidated and other allowance arrangements currently in the *Queensland Local Government Industry Award – State 2014* to ensure employee entitlements have not been reduced in comparison with the allowances arrangements prescribed in the pre-modernisation awards.

The Commission is to give consideration to the submissions of the parties in the review of the allowances and other provisions, in particular where a party can demonstrate a reduction in employee remuneration or an employee entitlement as a consequence of the consolidation of, or changes made to, the allowances and other provisions.

Classification structure

Subject to the outcome of the consideration of the number of modern awards operating in the local government industry, the Commission is to ensure that the classification structure or structures in the modern award or awards is meeting/will continue to meet the needs of the local government industry. The Commission is to give consideration to the submission of the parties in the review of the classification structure.

HON. CURTIS PITT MP

Treasurer

Minister for Employment and Industrial Relations

Minister for Aboriginal and Torres Strait Islander Partnerships

/July/2015